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A

POPULAR DICTIONARY

OF

PAROCHIAL LAW & TAXATION,

AND OF THE

DUTIES OF PARISH OFFICERS;

ALPHABETICALLY ARRANGED:

COMPRISING

ASSESSED TAXES
POOR AND CHURCH RATES
HIGHWAY RATES
WATCH AND LAMP, SEWERS'
AND COUNTY RATES
MARRIAGE, BAPTISM, AND
BURIAL
MILITIA
SETTLEMENT AND MAINTENANCE OF THE POOR

JURIES AND JURY LISTS
CHURCHWARDENS
OVERSEERS
CONSTABLES
VESTRY AND VESTRY CLERK
VICAR, RECTOR, &c.
PARISH CLERK
BEADLE
DISTRESS FOR RENT & TAXES,
ETC. ETC. ETC.

AND GENERALLY, ALL INFORMATION LIKELY TO BE SERVICEABLE TO

PAROCHIAL AUTHORITIES,

OR SOUGHT FOR BY

PARISHIONERS AND RATE-PAYERS.

THE WHOLE COMPILED FROM THE BEST AND MOST AUTHENTIC LEGAL SOURCES,

By J. H. BRADY, AUTHOR OF

"PLAIN INSTRUCTIONS TO EXECUTORS AND ADMINISTRATORS;"

AND

REVISED BY JAMES N. MAHON, Esq.

OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

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PREFACE.

THE object of the following work is to give, in alphabetical order, with ready reference, all information on Parochial subjects, and Parish Law, that may be necessary and useful to parish officers, and to the numerous class, among the public generally, who are liable to serve those offices, and as householders, subject to the payment of taxes, whether parliamentary assessments, or parochial and church rates.

There are many and elaborate works already extant on parish law, but the majority are professional and exclusive, all high priced, and no single work comprising all the topics contained in this volume. The assessed taxes, for instance, not ranging under parochial law, though payable by all householders; sewers' rates, tithes, militia, and jury l'sts, pews in churches, marriages, baptisms and burials, the local

police, &c. &c.; subjects, though highly interesting to all householders, find no mention in legal treatises, devoted exclusively to enactments and judicial decisions on parochial and the poor laws.

The utility of a work of easy reference, and condensing the best legal information on subjects essentially interesting to every class of householders, will, it is hoped, be appreciated by the public at large. It has been prepared more with that view than a circulation with the profession, who are furnished with treatises more elaborate and extended. No industry or research have been spared in the compilation; the ancient authorities, and most recent text writers and reports, have been carefully consulted; and the work of revision confided to a barrister of considerable practice and experience in sessions and parochial law.

In his labours of compilation the Editor of these sheets has been much indebted to Mr. Chitty's recent edition of Burn's Justice—to Mr. Steer's able Treatise on Parish Law—to the late Mr. Nolan's valuable work on the Poor Laws—to Mr. Const's edition of Bott on the same subject—to Dr. Robinson's

“Lex Parochialis”—and to the series of Reports, among others, those of Messrs. Durnford and East, and of Mr. Barnewall and his co-reporters, which bring down the judicial decisions to the present day. All the existing statutes affecting Parish Law, and the settlement and maintenance of the poor, have been carefully consulted, and few errors, it is trusted, can have escaped the professional revision the work has undergone.

The “Dictionary” is intended, from its size and price, to be generally attainable by the community, and if only found as useful as the Editor sincerely desires it to be, his labours will be more than compensated.

February, 1834.



BRIEF GLOSSARY

OF

TECHNICAL TERMS USED IN THIS WORK.

APPROPRIATION (Lat. *appropriatio*, from the French *approprier*), is the annexing of an ecclesiastical benefice, or living, to the use of some religious house, bishopric, college, or spiritual person, to enjoy for ever. See **IMPROPRIATION** and **IMPROPRIATOR**.

BENEFICE (Lat. *beneficium*). According to the strict acceptation, the term *benefice* is properly applied to rectories and vicarages only; but it is generally used as signifying any ecclesiastical living or promotion.

CORPORATION (Lat. *corporatio*, from *corpus*, a body). A body politic, or incorporate; so called from the persons composing it being made, as it were, into one body. Or, it is an assembling and joining together of many into one fellowship and brotherhood, whereof one is head and chief, and the rest form the body, constituting together what is termed in law a corporation.

Of corporations, some are said to be *sole*, and some *aggregate*; sole, when the corporate rights are vested in a single person, as the king, a bishop, dean, &c.; aggregate (which is the most usual), when they are exercised jointly by many persons, as mayor and commonalty, dean and chapter, &c. They are also *spiritual*, *temporal*, and *mixed*; spiritual, when of bishops, deans, archdeacons, parsons, vicars, &c.; temporal, when of mayors, commonalty, bailiffs, and burgesses, &c.; and mixed, when composed of spiritual and temporal persons, as heads of colleges and hospitals, &c. Corporations are usually termed either *ecclesiastical* or *lay*.

COMMON LAW. The *Common Law*, according to Hale, "is the common rule for administering justice within this kingdom, and asserts the king's royal prerogatives, and likewise the rights and liberties of the subject. It is generally that law by which the determinations in the king's ordinary courts are guided; it directs the course of descents of lands; the nature, extent, and qualifications of estates, and the manner and ceremonies of conveying them from one to another; with the forms, solemnities, and obligations of contracts; the rules and directions for the exposition of deeds and Acts of Parliament; the process, proceedings, judgments, and executions of our courts of justice; the limits and bounds of courts and jurisdictions; the several kinds of temporal offences and punishments," &c. &c. (*Hale's History of the Common Law*.)

In more modern and familiar language, the Common Law includes all those laws which do not derive their origin from Acts of Parliament, but from

long custom and use, ascertained from the records of our courts of justice, from reports and judicial decisions, and from the treatises of distinguished men handed down from high antiquity.

CIVIL LAW. "That law which every particular nation, commonwealth, or city, has established peculiarly for itself." (*Just. Inst.*) Such law, however, is now more properly termed *municipal* law; while the phrase *civil* law, as used by us, is understood to be chiefly applied to that which we have adopted from the Romans, and which was originally derived by them from the laws of nature, and of other nations with which they had intercourse, and afterwards compiled from the *Institutes* of Justinian, containing the elements of the Roman law in four books: the *digests*, or *pandects*, in fifty books, containing the opinions, &c. of eminent lawyers; the *new code*, in twelve books; and the *novels*, or new constitutions, or authorities, containing the new decrees of successive emperors.

The Civil Law is still allowed to be used, under restrictions, as an inferior branch of the customary or unwritten laws of England, in the ecclesiastical, military, maritime, and academical courts: as is also the *canon* law (which see).

CERTIORARI. This is an original writ, issuing out of the Court of Chancery, or King's Bench, directed, in the king's name, to the judges or officers of inferior courts, commanding them to certify, or to make a return of the records of a cause depending before them, to the end that the party may have the *more certain* (which is the literal meaning of the term) and speedy justice before the king, or such justices as he shall assign to determine the cause. (*Jacob's Law Dict.*) It is in fact moving a cause from an inferior to a superior court, but is not allowed without security being given to plead to the indictment in the superior court.

CAPIAS, or **WRIT OF CAPIAS**, as used in this work, signifies a process directing a sheriff or other officer to take or seize the body of any person named therein as an offender against the peace. See *Constable*.

CAPIAS UT LEGATUM, is a writ that lies against a person who is outlawed in any action, by which the sheriff is commanded to apprehend the body of the party outlawed, and keep in safe custody, &c.

CAPIAS PRO FINE, is a writ which issues (or rather formerly did issue) against a defendant, that he be taken until a *fine* be paid to the king.

CANON LAW. The Canon Law consists partly of rules from Scripture, partly of the writings of the ancient fathers of the church, partly of the ordinances of general and provincial councils, and partly of the decrees of the popes in former ages.

By stat. 25 Hen. 8. c. 19. revived and confirmed by stat. 1 Eliz. c. 1. it was enacted, that until a *review* of the Canon Law should take place, all canons not repugnant to the king's prerogative, nor to the laws, statutes, and customs of the realm, should be used and exercised. On these statutes, therefore, the canon laws of this kingdom still depend; while with respect to those canons which were enacted by the clergy under James I. (A.D. 1603), but have never been confirmed by Parliament, it hath been solemnly adjudged, upon the principles of law and the constitution, that where they are not merely declaratory of the ancient canon law, but introduce *new regulations*, they do not bind the laity, whatever regard the clergy may think proper to pay to them. (*Stra.* 1057; 2 *Atk.* 605.)

There are four species of courts in which the canon laws (and the civil laws also, see **CIVIL LAW**) are permitted, under certain restrictions, to be

used; viz. the *Ecclesiastical* courts, the *Military* courts, the courts of *Admiralty*, and the courts of the two *Universities*. In all, the reception of those laws in general, and the different degrees of that reception, are grounded entirely upon custom, corroborated, as to the Universities, by Act of Parliament.

COURT LEET. See **LEET**.

EXCOMMUNICATION (Lat. *Excommunicatio*.) An ecclesiastical censure, or mode of punishment inflicted by the authority of the church, and divided into the *greater* and the *lesser*. By the latter a person on whom the sentence has been passed is excluded from the communion of the church only; by the former he is debarred from the communion of the church and from the company of the faithful, and is also rendered incapable of performing any legal act.

By stat. 53 Geo. 3. c. 127. s. 1 & 2, excommunication is abolished in all cases, except in definitive sentences, or judgments having the force of definitive sentences, pronounced as spiritual censures for offences of ecclesiastical cognizance.

And if the judge of any spiritual court excommunicate a man for a cause of which he hath not the legal cognizance, the party may have an action against him at common law, and he may also be indicted at the suit of the King. (1 Inst. 134. 2 Inst. 527, 623.)

EX OFFICIO.—The power a person has by virtue of an office to do certain acts without being applied to; as a justice of peace may not only grant surety of the peace, at the complaint or request of any person, but he may demand and take it *ex officio*, at discretion. (Dalt. 270.)

Thus an *Ex Officio Information* at the suit of the King, is filed by the Attorney General, by virtue of his office, without applying to the court wherein filed, for leave, or giving the defendant any opportunity of showing why it should not be filed.

FACULTY (Lat. *Facultas*.) As restrained from the original and active sense to a particular signification in law, this term is used for a privilege granted to a man by the favour and indulgence of the ecclesiastical court. For this purpose there is an especial court under the Archbishop of Canterbury, called the *Court of Faculties*.

IMPROPRIATION (Lat. *Impropriatio*.) The annexing an ecclesiastical benefice, or living, to the use of a lay person or corporation.

“That which is an appropriation in the hands of religious persons, colleges, or religious houses, is termed an *impropriation* in the hands of the laity.” (Conyer’s Digest.)

At the dissolution of monasteries, in stat. 27 Hen. 8. c. 28. and 31 Hen. 8. c. 13. a clause was inserted to give the appropriations of those religious establishments to the King, whence sprang all the lay impropriations in this country, they having been afterwards granted out, from time to time, by the Crown.

IMPROPRIATOR. A lay person, or body corporate, having the patronage, &c. of a benefice.

INCUMBENT (from the Latin *incumbo*, to bend, or apply, mind diligently.) A clergyman resident on his benefice, with cure of souls; so called because all his studies or efforts ought to be bent or directed towards the discharge of the duties of the church to which he belongs.—See **PARSON AND MINISTER**.

LEET. COURT LEET. The word *Leet* is said to be derived from the

Saxon *leod*, *plebs*, the people; and to mean *populi curia*, the people's court, or *folk-mote*, as the sheriff's *tourn*, or leet for the county, appears to have been once called. (*Spelman*).—As used in this work, the word may be said to signify a public meeting for the nomination or election of certain parochial officers; in which sense it is often used in Archbishop Spotswood's "History of the Church of Scotland."

According to Hawkins, a Court Leet is a court of record, having the same jurisdiction within some particular precinct, which the sheriff's *tourn* hath in the county. (*Hawk. P. C.* II. 112.)

The word *leet* is also used for a *law day* in several of our ancient statutes; and that the court so called is the most ancient in the land seems incontestible. Lord Mansfield considered it to have been coeval with the establishment of the Saxons here, (3 *Burr.* 1860; 1 *Roll. Rep.* 73;) when, whoever possessed a vill or territory with certain obsolete privileges, was the lord of a manor, had a Court Leet, Court Baron, &c.

The greater part of the business formerly transacted at the Court Leet, as well as at the sheriff's *tourn*, has devolved on the quarter sessions.

MANDAMUS. A writ of *mandamus*, (which is the Latin for *we command*) when considered as a remedy for the refusal or neglect of justice, is, in general, a *command* issuing in the King's name from the Court of King's Bench, and directed to any person, corporation, or inferior court of judicature, within the King's dominions, requiring to do some *particular* thing therein specified, which appertains to their office and duty, and which the Court of King's Bench has previously determined, or at least supposes to be consonant with right and justice. (*Black. Comm.*)

ORDINARY (Lat. *Ordinarius*) is a term used in the civil law, for any judge authorized to take cognizance of causes in his own right, and not by deputation; while in the common law it is applied to him who hath ordinary, or exempt and immediate, jurisdiction in causes ecclesiastical. Thus every bishop having original jurisdiction is entitled to the term; and an archbishop is the ordinary of the whole province, to visit and receive appeals from original jurisdiction, &c. The word ordinary is also used for every commissary or official¹ of the bishop, or other ecclesiastical judge having judicial power. Thus it is the ordinary who grants administration of intestate's effects, &c. But the bishop of the diocese is the true and only ordinary to certify excommunication, bastardy, &c. to the judges of the common law.

PARSON (Lat. *Persona Ecclesiæ*), so called, because by his person (*persona*) the church is represented. "The appellation of *parson*," says Coke, "is the most legal as well as the most honourable title that a parish priest can enjoy, because he only is said to represent the person of the church, which is of itself impersonate." In the vulgar language of modern times, however, the appellation *parson* is applied without distinction to every person engaged in conducting public worship—the term *minister* is also used with as little discrimination; and, consequently, the more modern title of *incumbent* has in a great degree usurped the place of both *parson* and *minister* when speaking of the rector or vicar, (or by whatever other title he may be known,) who is in fact the ecclesiastical superior in a parish.

PERSONAL PROPERTY. The word *personal* being joined with the sub-

¹ Commissaries, or officials, are they to whom the bishop of the diocese commits the charge of his spiritual jurisdiction. In this sense there is an official in every diocese, called *Officialis Principalis*, whom the law styles *Chancellor*; and the rest, if there are more, are usually termed *commissaries*.

stantives *things, goods, chattels, estate, or property*, signifies any moveable thing, quick or dead. (*West. Symbol. p. 2. s. 58.*)

"Personal property, or estate, or personalty, signifies money in the funds; debts of every description (even those on mortgage); moveable goods and chattels, as household furniture, &c.; and household estates, whether held for a term of years, or for lives." (*Powell on Wills and Executors, 1832.*)

POSTEA. The return of a judge before whom a cause was tried, after a verdict, of what was done in the cause; so called from its beginning, in Latin, thus: "*Postea, dis et loco,*" &c.; i. e. in English, *afterwards, on the day and at the place named*, the plaintiff and defendant shall appear, &c.

PRESCRIPTION (Lat. *præscriptio*) a title acquired by use and time, and therefore allowed by law; as when a man claims any thing because he, his ancestors, or they to whose estate he lays claim, have had or used it during the whole of a certain time, whereof no memory is to the contrary. (*Coke.*)

"Custom continued till it hath the force of law." (*Bacon.*)

"A right to a thing acquired by long, honest, and uninterrupted possession." (*Rutherford's Institutes.*)

PRESENTMENT, in the sense used in this work, is a mere denunciation, declaration, or report, made by certain officers (as churchwardens, surveyors of highways, &c.) of an offence, inquirable into and punishable by the court where it is presented.

QUORUM, in the Latin, signifies literally *of whom*. The word often occurs in our statutes and law-books, but particularly in commissions to justices of the peace. A justice of the *Quorum* is so called from the words in the commission, "*Quorum A. B. or C. D. unum esse volumus*" (of whom we will A. B., or C. D. to be one); the effect of which is, that the rest cannot proceed without them. The commission appoints all justices, jointly and severally, to keep the peace; and a certain number of them may inquire into and determine concerning felonies, &c.; in which numbers, some particular justices, or one of them, are directed to be always included, and no business to be done without their presence; the words running thus: "*Quorum aliquem vestrum, A. B., C. D., &c. unum esse volumus*" (of whom any one of you, A. B., C. D., &c. we will shall be one); whence the persons so named are usually styled *Justices of the Quorum*.

The custom now, however, is to advance almost all justices of the peace to what is termed the dignity of the Quorum.

REAL ESTATE OR REALTY. Freehold and copyhold, or customary, lands, tenements, houses, &c. Customary lands, &c. are such as are holden according to the custom of certain manors; they are usually of copyhold tenure.

RUBRIC, à *rubro colore*, from the red colour, because anciently written in red letters.—Constitutions of the Church, founded on the statutes of uniformity, and public prayer, viz. 5 & 6 Edw. 6. c. 1; 1 Eliz. c. 2; 13 & 14 Chas. 2. c. 4; and some others.

"Rubric signifieth a special title or sentence of the law, or of any book written or printed in red. Thus, in the Canon Law, the arguments of every chapter were written with red letters, (which were called the *Rubric*), and the text with black." (*Blount's Glossographia, 1681.*)

The phrase "the Rubric," as now used, however, is commonly understood as referring to the directions contained in the book of Common Prayer; which direction were originally printed in red.

SEQUESTRATION (Lat. *sequestratio*) signifies generally the separating or setting aside of a thing in controversy, from the possession of both of the parties contending for it. It is two-fold; voluntary and necessary: voluntary, when done by consent of both parties—necessary, when the judge, from a conviction of its necessity, ordereth it, whether the parties consent to it or not. (*Fortescue*, c. 50; *Dyer*, 232. 256.) The word sequestration has other meanings, both at law and in equity; but it is only as relating to a benefice that it is used in this work, in which sense it will be sufficiently intelligible from the above general explanation, with the addition merely, that when a benefice is vacant, a sequestration is, on application, granted by the ordinary to the churchwardens, not on account of any *controversy*, but simply because it is vacant, that it is but justice its fruits and profits should be taken care of for the use of the next incumbent, and that proper provision should be made for the payment of a curate during such vacancy.

SHERIFF'S TOURN OR TURN. See **TOURN**.

TOURN OR TURN. The great court leet of the county, of which the sheriff is judge, and for which reason it is called the sheriff's tourn. It had its name, originally, from the sheriff's taking a turn or circuit about his shire, and holding this court in each hundred. (2 *Hawk. P. C.* c. 10.)

The nature and jurisdiction of this and the court leet are exactly the same, (see **LEET**,) with the exception that the former has a more extended jurisdiction than the latter. Much of the business of both has now devolved on the quarter sessions.

WRIT OF INQUIRY. A judicial writ, issued to the sheriff upon a judgment by default, in action, on the case, covenant, trespass, trover, &c. commanding him to summon a jury to *inquire* what damages the plaintiff hath sustained. Letting judgment go by default is an admission of the cause of action; fraud in the original contract, therefore, cannot be pleaded; but the inquisition may be moved to be set aside for excessive damages, and other causes.

A

DICTIONARY

OF

PAROCHIAL LAW.

Affray.

AN affray (Fr. *affrayer*, to affright) is the fighting of two or more persons in *public*, to the terror of others of his Majesty's subjects. *Coke, 3 Inst. 158.* What constitutes an affray

If the fighting be in *private*, heard and seen only by the parties concerned, as it cannot be said to cause terror to the public, it will be deemed an *assault* rather than an affray. *1 Hawk. c. 63. s. 1.*

Mere words, however quarrelsome or menacing, will not amount to an affray, to justify the active interference of other persons; though it seems that a *constable* is empowered, at the request of a party threatened, to carry the person threatening him before a justice, in order to find sureties. But the threatening must have taken place in the presence and hearing of the constable. *1 Hawk. c. 63. s. 2.* Threatening language.
Constables' powers in particular cases.

In some cases, however, there may be an affray though there be no actual violence; as where a man arms himself with dangerous and unusual weapons in such a manner as would naturally cause terror to the public. This is stated to have always been an offence at common law, and it is prohibited by many statutes. *1 Hawk. c. 63. s. 4.* Affrays without actual violence.

The power of a private person to act in the sup- The power

of a private person to suppress affray.

pression of affrays, is thus briefly explained:—Any one who sees others fighting may lawfully part them, and also stay them till their heat be over, and then deliver them to the constable, who may carry them before a justice of the peace to find sureties. 1 *Hawk.* c. 63. s. 11.

Ibid.

Also, any private person may stop those whom he shall see coming to join either party, and the law encourages such interference; and if he receive any harm from the affrayers in so doing, he has his remedy by action; while, on the other hand, if the affrayers receive injury by the endeavouring only to part them, the by-standers who shall have thus interfered will be justified, and no action against them will avail. *Ibid.* & *Coke*, 3 *Inst.* 158.

As to the powers of a constable in affrays, see CONSTABLE.

APPEAL AGAINST ASSESSED TAXES.—See ASSESSED TAXES.

Apprentices.

Apprenticeships in general not relevant.

APPRENTICESHIPS, in general, except so far as they confer what is termed a settlement under the Poor Laws (for which see SETTLEMENT), do not come within the compass of this work.

Parish Apprentices.

In considering the laws relative to *Parish Apprentices* we shall adopt the following divisions:

I. *As to their binding, and who compellable to be so bound.*

II. *Who compellable to take them.*

III. *Their assignment and discharge, settlement of disputes concerning them, and their registration.*

IV. *Incorporated District Apprentices.*

V. *Public Charity Apprentices.*

VI. *Apprentices to the Sea Service.*

VII. *Chimney Sweepers' Apprentices.*

Binding of Parish Apprentices.

43 *Eliz.* c. 2.

By 43 *Eliz.* c. 2. s. 5. "the churchwardens and

APPRENTICES.

3

overseers of a parish, with the consent of two justices, one of whom must be of the quorum, may bind any such children whose parents they shall adjudge not able to maintain them, to be apprentices, where they shall see convenient, till such male child (by 18 Geo. 3. c. 47.) shall come to the age of 21 years, and such woman child to the age of 21 or marriage; the same to be as effectual to all purposes as if such child were of full age, and, by indenture of covenant, bound himself or herself."

Who to be bound as parish apprentices: by whom, &c.

The parish officers must be parties to all parish indentures; but the execution by the apprentice himself or herself, in such cases, is not essential to the validity of the indentures. *St. Nich. Notts. 2 T.T. 726.*

Parish officers must be parties to the indentures.

It seems clear, however, that neither the assent of the justices, nor the execution by parish officers, is necessary in cases where a minor, though a pauper at the time, is not *put out by the parish*, but *binds himself voluntarily* with the consent of his parents; not even if the parish authorities so far interfere in furtherance of his views as to pay the premium. *Rex v. Arundel, 5 Maul. & Sel. 257. Rex v. St. Mary's, Reading, 1 Bott. 609.*

The last statute which regulates parish bindings, is the 56 Geo. 3. c. 139., which enacts by sect. 1. that, from and after the 1st Oct. 1816, every parish apprentice, before being bound, shall be carried before two justices of the peace of the county, &c. wherein their parish shall be situate, who shall inquire into the propriety of binding such child apprentice to the person or persons proposed; and particularly whether such persons reside, or carry on business, within a reasonable distance from the place to which such child shall belong; may examine the father or mother of the child, if living and residing in or near the parish, particularly as to the distance from, and means of communication with, the residence or place of business of the persons with whom it shall be proposed to place such child; and such justices shall inquire into the circumstances and character of the persons so proposed; and if, after such examination

56 Geo. 3. c. 139. How parish apprentices to be bound. Child to be carried before two justices; who shall inquire as to distance of master's residence, &c.;

- and make order to authorize the binding; which must be referred to in indenture.
- No child to be bound beyond 40 miles out of county, *unless* parish above 40 miles from London.
- Special order in the latter case.
- Indenture to be approved by two justices of county, &c. in which apprentice is bound, as well as by two of the county, &c. *from* which he is bound.
- Exception as to certain justices.
- Notice to be
- and inquiry, they be satisfied of the propriety of binding the child in the manner proposed, they shall *make an order* which shall authorise the binding accordingly, *which order shall be referred to*, by the date thereof, and the names of the justices, *in the indenture of apprenticeship*¹ of such child; and after such order shall have been made, such justices shall sign their allowance (approval) of the indenture, before the same shall be executed. *Provided always*, that no such child shall be bound apprentice to any person residing, or carrying on trade, *out of the same county*, at a *greater distance than forty miles from the parish or place to which such child shall belong*, unless such parish or place be more than forty miles from the city of London, in which case the justices may authorize the apprenticing of such child by a *special order*, in which they shall distinctly specify the grounds on which they decide on such apprenticing.
- Sect. 2. That in all cases where the residence or place of business of the person to whom any such child shall be bound, shall be within a different county or jurisdiction of the peace from that within which the place from whence such child is bound shall be situate, and in all other cases where the justices shall not have jurisdiction, every indenture (after the 1st Oct. 1816) shall be allowed not only by two justices of the county or district of the child's parish, but also by two justices of the county or district within which the place shall be situated wherein such child shall be intended to serve: *Provided always*, that no such indenture shall be allowed by any justice of the peace for the county into which such child shall be bound, who shall be engaged in the same business in which the proposed master is engaged; and *notice shall be given to the overseers*

¹ "It has been held," says Mr. Steer, "that the part of the act which requires that the order of justices be referred to in the indenture by the *date thereof* is *compulsory*, and that an indenture in which the date of the order is omitted is *void* and *no settlement is gained by serving under it.*" *Rez v. Dawbergh*, 2 Barn. & Cres. 222.; 3 Dowl. & Ryl. 338.

*of the poor of the parish in which such child shall be intended to be apprenticed*¹, before any such justice shall allow the indenture; which notice shall be *proved* before such justice shall sign the indenture, unless one of the overseers attend and admit such notice.

given to the overseers, &c. where child is to serve.

Sect. 3. That the allowance of two justices for the county within which the place in which such child shall be intended to serve an apprenticeship shall be situate, shall be valid and effectual, although such place may be situate in a town or liberty within which any other justices of the peace may in other respects have exclusive jurisdiction.

The allowance of county justices to be valid in towns, &c. having exclusive jurisdiction.

Sect. 4. enacts, that inasmuch as there are several cities and boroughs which are counties of themselves, and several districts situated without the limits of the county to which such districts respectively belong, the distance to which parish apprentices may be bound shall not be construed to be limited to such cities and boroughs being counties, but shall extend to the county in which any such city and borough, and any such district, though belonging to another county, shall be locally situated.

Distance not to be limited to cities being counties of themselves.

Sect. 5. That no *settlement* shall be gained by the apprenticeship of any child, bound by the officers of any parish, *unless such order shall be made, and such allowance signed, as before directed.*

No settlement to be gained without order and signature of justices.

Sect. 6. That in case overseers shall bind an apprentice without such order and authority, and in case any person shall so receive such apprentice, such overseers and persons shall each respectively forfeit the sum of ten pounds for each apprentice so bound, to be recovered as hereinafter directed.

Penalty on overseers binding contrary thereto.

Sect. 7. That, after the said 1st Oct. 1816, it shall not be lawful for any parish officers to bind out any child as parish apprentice *before the age of nine years.*

No child to be bound under 9 years old.

Sects. 8, 9, 10, relate to the assignment and discharge of parish apprentices, for which see p. 11.

Sect. 11. That inasmuch as the salutary provisions contained in an act passed in the 43d year of

Recital of 43 Eliz.

¹ If this notice be not properly given, it seems doubtful whether the indenture would not be *void*. 3 Barn. & Cres. 59.

No indenture of apprenticeship at the expence of parish to be valid, unless approved by two justices.

the reign of Elizabeth, entitled "An act for the Relief of the Poor," are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out poor children without the sanction of justices; be it enacted, that, after the said 1st Oct. 1816, no indenture of apprenticeship, by reason of which *any expense whatever shall at any time be incurred by the public parochial funds*, shall be valid, *unless approved of by two justices under their hands and seals*¹, according to the provisions of the said act, and of this act.

How penalties to be sued for.

Sect. 12. That all penalties and forfeitures hereby imposed shall be recovered by information before any two justices of the county or district where the offence shall be committed.

How to be applied.

Sect. 13. That the justices before whom any such penalty may be recovered, may direct the same, deducting costs of proceedings, to be paid and applied either to the informer, or to the overseers of the poor of the parish in which such offence shall have been committed, or for the use of the poor of the parish into which such apprentice shall be bound, or in the binding of such apprentice to any other person, or for any one or more of such purposes.

To be recovered, if not paid, by distress and sale.

Sect. 14. In case of non-payment of such penalty, the same shall be levied by distress and sale, by warrant under the hands and seals of the justices before whom the offender shall have been convicted, or of any other two justices of the same county or district; and for want of such distress the offender shall be committed to the common gaol or house of correction, for any period not less than one nor more than six months, as said justices shall appoint.

If not sufficient distress, offender may be committed for not more than six months.

Sect. 15. Prescribes the form of conviction.

Justices may imprison in preference to distraining.

Sect. 16. That in case any person convicted of any offence against this Act shall not pay the penalty

¹ Under this section of the act it has been decided, that the *sealing* of the justices is indispensable, as well as the signing, or the indenture will be void. *Rex v. Stoke Daverell*, 7 Barn. & Cres. 563. 1 Mann. & Ry. 458.

APPRENTICES.

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imposed within one calendar month, the justices convicting, or any other two justices of the same county or district, may issue their warrant for the apprehension and imprisonment of such offender, notwithstanding he or she may have goods or chattels whereby such penalty might have been levied.

Sect. 17. That any person who shall be dissatisfied with any act done by any justice in the execution of this Act may appeal against the same to any court of general or quarter sessions to be holden for the county within which such act shall have been done, within three calendar months after the act so complained of, upon giving notice in writing to such justice, and also to the persons who shall be interested in such appeal, within twenty-one days next after the act so appealed against shall have taken place; and, in case such appeal shall be against any conviction, entering into a recognizance, with two sufficient sureties, before any justice of the county or district within which such conviction shall have taken place, to appear at such general or quarter sessions to abide the judgment of the court, and to pay the costs which may be awarded; and the justices at such sessions shall hear and determine such appeal, and award costs therein; and all such appeals shall be to the sessions of the county within which the act appealed against shall have taken place, and not to any district or liberty within the same.

Persons considering themselves aggrieved may appeal within three months.

Sect. 18. That the provisions and penalties herein contained respecting overseers of the poor shall be deemed to extend to all churchwardens having the power and authority of overseers of the poor; and that all provisions respecting any parish or place, shall extend to any incorporated or other district¹ for the maintenance of the poor; and that the officers of any such district having the power to bind apprentices, shall be subject to all the rules, penalties, &c. respecting overseers.

Justices at sessions to hear and determine appeals.

Churchwardens included in meaning of act;

By the 54 Geo. 3. c. 107, an enactment is made to render valid such indentures as are signed by the

54 Geo. 3. c. 107.

¹ As to incorporated district apprentices, see further, p. 21.

Indentures for binding parish apprentices in certain townships, &c. made valid.

church-wardens, or chapel-wardens, &c. of certain townships, hamlets, or chapelries, contained within parishes, which severally maintain their own poor, notwithstanding that such churchwardens, &c. may not have been sworn in for such hamlet, &c. in particular, but as churchwardens, &c. of the parish; but such churchwardens, &c. *must* have been duly sworn in for the *parish* wherein the township binding such apprentice is contained.

51 Geo. 3. c. 80.
Recital of
43 Eliz.

By stat. 51 Geo. 3. c. 80. after reciting "that whereas by 43 Eliz. c. 2. it is enacted, that the churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, to be nominated yearly in Easter week, or within one month after Easter, in the manner therein directed, shall be overseers of the poor of the same parish; and that it shall be lawful for the said churchwardens and overseers, or the greater part of them, by the assent of two justices of the peace, to bind poor children apprentices; and that whereas in divers small parishes two persons only have been annually appointed to act as churchwardens as well as overseers:" it is enacted, "that all indentures heretofore or hereafter to be executed by any such two persons so acting, shall be good and valid.

Indentures executed by two persons acting as churchwardens and overseers to be valid.

By stat. 1 and 2 Geo. 4. c. 32. it is further enacted, that from and after the passing thereof (May 28th, 1821), all indentures for the binding of parish apprentices, executed *previously thereto* by one church or chapel-warden, acting as such for any parish, &c. in which *two* had formerly been appointed, shall be good and valid.

1 and 2 Geo. 4. c. 32.
Certain indentures executed by one churchwarden, &c. (before 28 May, 1821) to be valid.

32 Geo. 3. c. 57.
Proviso to be inserted in indentures in case the master or mistress should die.

And by stat. 32 Geo. 3. c. 57. it is enacted, that in all indentures of poor apprentices *on whose binding no larger a sum than 5l. was paid*, there shall be annexed to the covenant which compels the master or mistress to provide meat, drink, apparel, lodging, &c. for the apprentice during the term of apprenticeship, a proviso declaring that such covenant shall not remain in force for any longer time than *three calendar months after the death of such master or mistress*, in case he or she die during the term of such

Though omitted, covenant for maintenance, &c. to endure for 3

apprenticeship; and in case such proviso be *omitted*, such covenant for maintenance *shall not remain in force beyond three months after the death of the master or mistress*, as aforesaid. months only after death.

As to *what* parish children are compellable to be bound apprentices in the manner directed by the several statutes which regulate their binding, it seems to be left entirely to the discretion of the parish officers to select *such children whose parents they may deem unable to maintain them*. 43 Eliz. c. 2. s. 5. 18 Geo. 3. c. 47. It is certain, that the child must be of parents *not able to maintain him*, and by the 56 Geo. 3. c. 139. s. 7. before quoted, *of the age of nine years or upwards*. What children compellable to be bound as parish apprentices.

II. ~~Who~~ Who compellable to take Parish Apprentices.

By the 8 and 9 Will. 3. c. 30. s. 5. it is enacted, that "where any poor children shall be appointed to be bound apprentices pursuant to stat. 43 Eliz. c. 2. *the persons to whom they are so appointed to be bound shall receive and provide for them*, according to the indenture signed and confirmed by the two justices of the peace, and also *execute the other part of the said indentures*; and if any such person shall *refuse* so to do (oath being thereof made by one of the churchwardens or overseers of the poor, before two justices), he or she, for every such offence, *shall forfeit the sum of 10l.* to be levied by distress and sale of the goods of such offender, by warrant of the justices, to be applied for the use of the poor of the parish; but such person so appointed to receive an apprentice may appeal to the next general or quarter sessions, whose order shall be final." 8 and 9 Gul. 3. c. 30. Persons to whom parish children are appointed, under 43 Eliz. to be bound, compellable to receive them, &c. Penalty for refusal.

As the churchwardens and overseers of the parish have thus the power of placing out poor children apprentices, they are deemed the proper judges as to the *persons fit to be their masters*; and those are, *all persons who, by their profession or manner of living, have occasion to keep servants*; but the appointment Who compellable to take, if chosen by parish officers as the masters.

must be approved of by the justice; if the master be dissatisfied, he may apprentice him again. *Dalt. c. 58. p. 143.*

Gentlemen and clergymen.

Gentlemen of fortune, and clerical persons, are liable with others to take parish apprentices. *Black. Comm. 426.*

Occupiers of tithes.

So are *occupiers of tithes.* 2

The *condition of the master* is not a bar. *v. St. Margaret's, Lincoln, Burr.*

Occupiers of land, &c. though not residents.

Nor is it necessary that the master should reside in the parish, (2 *Term Rep. 726.*) provided he occupy land or tenements in it. 1 *Bott. 619.*

Occupiers in coparcenary.

And where two or more persons hold lands in copartnership, some of whom occupy the same, and others do not, it has been determined that the latter, as well as the former, are bound to take apprentices. 7 *Term Rep. 33.*

Churchwardens may apprentice to applicants in other parishes.

It seems clear, also, that the churchwardens, &c. are not constrained to bind children to the inhabitants of their own parish in particular, but are authorised to apprentice them to any other persons, no matter where resident, who may be willing to take them. 2 *Term Rep. 730.*

Master need not be of age.

It is not imperative that the master be of age. 2 *Term Rep. 196.*

Exemptions. Military officers.

By the Mutiny Act, published annually, it is usually enacted, that "no officer of His Majesty's forces, residing in barracks, or elsewhere, under military law, shall be deemed liable to have any poor parish child bound apprentice to him; but that every such officer shall be totally exempted therefrom."

Master convicted of having misused an apprentice to be fined in lieu of being compelled to receive another.

And the 32 Geo. 3. c. 57. s. 12. provides, that where any parish apprentice shall have been misused by the master, and such master shall have been convicted thereof, the churchwardens, &c. shall not bind any other apprentice upon such master; but that whenever such person would be compellable to take a parish apprentice, any two justices of the peace may, on application of the churchwardens and overseers, order such person to pay into the hands of such churchwardens, &c. a sum not exceeding 10*l.* nor less than 5*l.*, for the purpose of binding the child to

some other master; and in case such person shall refuse to pay such sum, the same, with expenses, may be levied by distress.

Hence, from the statutes quoted, and decisions Remarks. which have been made thereon, it appears generally, that clergymen, gentlemen, farmers, traders, and any other persons requiring the aid of servants (except military officers, as before stated), are compellable, at the discretion of the parish officers, with the sanction of two justices, to receive under their own roofs, maintain and provide for, a certain number of the juvenile poor of every parish, in aid of the parish funds; and if they refuse compliance with such decision of the parish officers, backed by the justices' order, they are punishable by fine on complaint, and distress in case of non-payment, or may be proceeded against by indictment. *Chitty's Burn's Justice*, 1831.

III. The Assignment, Discharge, and Registration of Parish Apprentices, and the Settlement of Disputes concerning them.

A parish apprentice under age cannot be discharged from his indentures by his master, because he himself assents to such discharge (1 *Burr.* 441); even though his father also consent (*Cald.* 126). The parish officers must concur in the arrangement. Minors cannot be discharged without consent of parish officers.

But after the apprentice has attained 21, the master and he may cancel the indentures by mutual agreement. 1 *Bott.* 608. Otherwise, if apprentice be 21.

By 32 Geo. 3. c. 57. s. 2. it is enacted, that 32 Geo. 3. c. 57. "whereas it is just and reasonable that such apprentice (*viz.* a parish apprentice) in case of his master's death during his apprenticeship, should be obliged, during the term of his apprenticeship, to make some satisfaction by his labour to the family or representatives of his deceased master, for the advantages he has received from his apprenticeship in his childhood, when his services could not be equal to the expenses of his maintenance; be it enacted, that *within three calendar months after the death of such master or* Objects of enactment.
Within 3 months after the death of a

master or mistress, two justices may order apprentices to serve the residue of their terms with persons herein specified, on application, &c.

mistress, any two justices for the county, &c. may, on application being made to them by the *widow, husband, son or daughter, brother or sister, executor or executrix, administrator or administratrix*, of such deceased master or mistress, by indorsement on any such indenture of apprenticeship, or its counterpart, or by any other instrument or writing, order and direct that such apprentice shall serve as an apprentice any one of such persons so making such application, (*such person having lived with and been part of the family of such master or mistress at the time of his or her death*) during the residue of the term mentioned in such indenture of apprenticeship; and the person obtaining such order shall declare his acceptance of such apprentice, by subscribing his or her name to such order; and after such order shall be so made, the executors and administrators, and the personal assets, &c. of such deceased master or mistress, shall be released from all covenants, &c. in such indenture; and the person obtaining the same shall be deemed the master or mistress of such apprentice, as though he had been originally bound to him or her, and shall be held and bound by all the covenants of the indenture, and liable to all penalties, &c.

Regulations, &c. herein on death of original master to extend to subsequent ones.

Sect. 3. That all the regulations, &c. directed to take place on the death of the original master or mistress, shall relate to the like event of the death of any subsequent master or mistress, and to their several relations and representatives before enumerated, as often as the same shall happen during the continuance of the term of apprenticeship.

Apprenticeship to expire if no such application be made, or if justices object.

Sect. 4. That in case no such application be made within three calendar months after the death of such master or mistress, or in case the justices shall refuse to continue the apprenticeship, then the same shall be determined, and the indenture and covenants be at an end, in like manner as though the term had expired.

Act to extend only to such apprentices as form part of family, &c.

Sect. 5. That this Act shall be construed to extend only to such parish apprentices as shall be living with and make part of the family, or shall be in

the actual employment of such original or subsequent master or mistress, at the time of his or her death.

Sect. 6. That, inasmuch as much difficulty and delay must necessarily arise in bringing an action upon the covenant for maintenance in any indenture of parish apprenticeship; be it enacted, that in case any such original or subsequent master or mistress (or their executors or administrators, during such three months as aforesaid) shall, during the term of any such apprenticeship, refuse or neglect to maintain and provide for any such apprentice according to the terms of such covenant, any two justices of the county, &c. to which such apprentice shall belong may, on complaint of such apprentice, or of the churchwardens or overseers, by warrant under their hands and seals, levy by distress and sale of the effects of such master or mistress, such sum as shall be necessary for the maintenance and clothing of such apprentice, as well as to reimburse such churchwardens, &c. any sums reasonably expended by them for such purpose.

Justices may order the necessary sums for maintenance, &c. of apprentice to be recovered by distress.

Sect. 7. After reciting that "it frequently happens that persons are *compellable*, by virtue of 9 and 10 Will. 3. to *take a greater number of parish apprentices than it is convenient for them to maintain or employ in their own family*—that they are therefore forced to place out or assign over such apprentices to other persons—and that it is proper that such assignment should be legally made, under the inspection and controul of the magistrates, as well for the benefit of the apprentice, as for the relief of the master:" enacts, that it shall be lawful for any master or mistress so circumstanced, by indorsement on the indenture, or by any other instrument in writing, with the consent of two justices of the county, &c. testified under their hands, to assign such apprentice to any person willing to accept him, for the residue of the term; but the person to whom such apprentice is intended to be thus assigned must, at the same time, by indorsement on the counterpart of the indenture, or by writing under his or her

Parish apprentices, forced upon masters to their inconvenience, may be assigned, with consent of justices.

How master must signify assent by indorsement of indenture.

hand, declare his or her acceptance of such apprenticeship, and acknowledge himself, herself, his or her executors and administrators, bound by the covenants, &c. of the indenture; and in such case such apprentice shall become the apprentice of such subsequent master or mistress, to all intents and purposes; and so from time to time, as often as it shall be necessary or convenient for any such subsequent master or mistress to part with such apprentice, with the consent of justices as aforesaid.

Apprentices may be discharged by justices, in case of insolvency or distress of master.

Sect. 8. That it shall be lawful for any two justices of the county, &c. on the application to them of any master or mistress who shall have become insolvent, or so far reduced in circumstances as to be unable to employ or maintain any such apprentice, to inquire into the facts, and to discharge such apprentice if the allegations be found true.

Extent of act as to premium paid.

Sect. 9. That *nothing herein contained shall extend to any parish apprentice with whom more than 5l. shall be given.*

Indorsements free of stamp-duty.

Sect. 10. That no indorsement made in pursuance of this Act shall be chargeable with any stamp-duty.

Order to be made by justices of the discharge of apprentice for ill-treatment by master or mistress, as to penalties, &c. to be paid.

Sect. 11. That where any parish apprentice shall be so *discharged*, (that is, on complaint of ill-treatment by the master or mistress,) such two justices may order such master or mistress to *deliver up to such apprentice his or her clothes and wearing apparel*, and *also to pay* to the churchwardens, &c. of the parish to which such apprentice shall belong, any sum *not exceeding 10l.* to be applied, under the order of such justices, for the re-binding out, or otherwise for the benefit of such apprentice; and *also to pay* any sum *not exceeding 5l.* in case of *refusal to deliver up such clothes*; such sums, with expenses, to be levied by distress, if not paid. And such justices may, if they think fit, compel such churchwardens, &c. to enter into a recognizance to indict such master or mistress for their ill-treatment, and may also order the expenses of such prosecution to be reimbursed to them, one half from the poor-rate and the other half from the county-rate; and in

Costs of prosecution by indictment, if ordered.

case such churchwardens, &c. shall refuse to pay such *their moiety*, (i. e. the one moiety to be charged on the poor-rate of the parish,) such justices may levy the same, with expenses, on the goods, &c. of such churchwardens, &c.

Sect. 12. That it shall be lawful for the master or mistress from whom any parish apprentice shall be discharged, by virtue of stat. 20 Geo. 2¹, to appeal against the order made for such discharge, and also against any order made for payment of any sum of money in consequence thereof, or in lieu of a subsequent binding, (by virtue of this Act) to the next general quarter sessions for the county, &c. in which such order shall be made; and upon such appeal, the sessions shall finally determine the same, and in their discretion allow to all parties their reasonable costs; and no distress for enforcing the payment of any such sums as are last mentioned shall be taken until after the quarter sessions next holden after such order shall be made, in case the person ordered to make such payment shall, within seven days after notice of such order, give notice to the churchwardens and overseers, some or one of them, of such intended appeal. And in case such person shall *fail to appear* in support of his or her appeal, then the sum of 40s.

Warrant of distress not to issue with-
in a certain
time, if due
notice of ap-
peal be given.

Failure of ap-
pearance in
support of
appeal.

¹ By the statute here referred to, 20 Geo. 2. c. 19, it is enacted by the third section, that it shall be lawful for any two or more justices of the county, &c. upon any complaint, or application, by any apprentice *put out by the parish*, (or any other apprentice, &c., which is irrelevant to our purpose,) concerning any misusage, refusal of necessary provision, cruelty, or other ill-treatment by the master or mistress, to summon such master or mistress to appear before them at a reasonable time to be named in such summons; and such justices may inquire into such complaint, and upon *proof thereof*, made upon oath, *to their satisfaction*, (whether the master or mistress be present or not, provided the service of the summons be also proved on oath,) may *discharge such apprentice*, by warrant or certificate under their hands and seals, without fees. By the 5th section, the master or mistress, if deeming themselves aggrieved by any such decision of the justices, may appeal to the next general quarter sessions of the county, &c. who shall finally determine, with costs not exceeding 40s., to be recovered by distress.

shall be added to the expenses of the distress before directed to be taken, and levied accordingly.

Apprentices discharged for ill-behaviour under 20 Geo. 2. c. 19. may be committed to the house of correction for not exceeding three months.

Sect. 13. That in all cases where any parish apprentice shall be discharged by two justices, by virtue of the said last-mentioned Act, (20 Geo. 2.) from his or her apprenticeship, on account of any misdemeanour, miscarriage, or ill-behaviour, on the part of such apprentice¹, such two justices may, if they think proper, by their warrant, punish such offender by commitment to the house of correction, there to remain and be kept to hard labour, for a reasonable time, not exceeding *three calendar months*.

56 Geo. 3. c. 139.

Master or mistress removing out of county, &c. to give notice fourteen days previously.

With respect to the assignment or discharge of parish apprentices in cases where the master or mistress *removes out of the county*, &c. it is enacted by the 8th sect. of the 56 Geo. 3. c. 139. that, "if any person to whom a parish child shall be apprenticed shall (after 1st Oct. 1816) remove his or her residence or business out of the same county, or forty miles from the parish, such persons shall, fourteen days previous to removal, give a written notice thereof to the churchwardens, &c. of the place where such apprentice shall then reside (unless such persons reside in such place under certificate, in which case they shall give the like notice to the churchwardens, &c. of the place where the apprentice shall then be

¹ By the 4th sect. of the 20th Geo. 2. c. 19. it is enacted, that two justices may, upon application, or complaint, made upon oath, by any master or mistress, against any apprentice put out by the parish (or any other apprentice, &c.) concerning any misdemeanour, miscarriage, or ill-behaviour, in his or her service, hear, examine into, and determine the same, and punish the offender by commitment to the house of correction, there to remain, and be corrected, and kept to hard labour, for a reasonable time, not exceeding *one calendar month, or otherwise by discharging such apprentice from his apprenticeship*.

The object of the new enactment contained in the section of the Act of which we are *now* treating, is stated to be "to prevent the expectation of such *discharge* under 20 Geo. 2., being an inducement to ill-behaviour on the part of the apprentice;" but it will be observed that the justices' power in respect to the period of imprisonment is also extended.

legally settled); and such churchwardens, &c. shall cause such apprentice to appear before two justices of the county or district within which such apprentice shall be then serving, who shall inquire whether it may be fit and proper that such apprentice should continue in the service of such persons, or be discharged therefrom, or assigned over to any other person, and shall make order, either for the continuance of such apprentice with such person, or for his or her discharge, or assignment to any other person, as to them shall seem meet; and, if they think fit, shall also require the persons so giving notice of removal to pay the amount of the premium received with such apprentice, or any portion of it, for the expense of assigning such apprentice. And in case any such master or mistress shall remove as aforesaid, and take any such apprentice to any other place, without such order, or shall wilfully abandon such apprentice, without giving such notice, every person so offending shall forfeit the sum of 10*l.* for every such apprentice to the churchwardens, &c. of the poor of the parish, &c. wherein, at the time of such removal, the apprentice shall have been legally settled, for the use of the poor; provided an information be exhibited for such offence within three calendar months after the commission of the same.

And apprentice shall be brought before justices; Who shall inquire into circumstances, &c. and make order accordingly.

May require return of premium.

Penalty on master or mistress removing without order, or abandoning apprentice without such notice.

Information must be laid within three months.

The 9th section of the same statute provides that, from and after the 1st Oct. 1816, it shall not be lawful for any master or mistress to put away or transfer any parish apprentice to any other, or in any way to discharge or dismiss such apprentice from his or her service, without such consent of justices as is directed by 32 Geo. 3. c. 57.¹ and that *no settlement*

Confirmation of provisions of 32 Geo. 3. as to putting away or transferring apprentices.

¹ The directions contained in the Act here referred to are as follow: "Whereas it may be expedient that those to whom parish apprentices are bound or assigned, should be empowered to assign them over to others, and it is proper that *such assignment should in all instances be under the inspection and control of the magistrates*; and it is fit that the person to whom such putting out or assignment shall be made, and also the apprentice, shall be made subject to the ordinary jurisdiction of justices with respect to masters and parish apprentices, and it is *inex-*

Settlement not gained unless complied with.

Penalty on persons discharging, &c. without consent.

How penalties under this act to be recovered.

5 Eliz. c. 4.

Discharge on account of ill-treatment by master, or misbehaviour in apprenticeship.

Construction, &c. of act.

shall be gained by any service of such apprentice, after such putting away or transfer, unless such service be performed under sanction of such consent.

Sect. 10. Any person, after the 1st Oct. 1816, putting away or transferring any parish apprentice to another, or in any way discharging or dismissing such apprentice, without such consent as aforesaid, shall forfeit a sum not exceeding 10*l.* for every apprentice so transferred.

Sects. 12, 13, and 14 enact, that all penalties under this Act shall be recovered by information, before any two justices of the county, &c. ; that the justices may apply the same, deducting costs, either to the use of the informer, of the poor of the parish; or towards the re-binding of the apprentice; and that in default of payment, the same may be levied by distress and sale, or in default thereof the offender may be committed to the common gaol or house of correction for any period not less than one, nor more than six months.

By the 5 Eliz. c. 4. it is enacted that if any master shall misuse or ill-treat his apprentice, or the apprentice shall not do his duty to his master, the party having cause to complain may repair to a justice of the peace within the county, or the other head officer of the town or place, who shall determine as equity shall require; and if the parties will not comply, they may be required to appear at the sessions, at which four at least of the justices shall, if they think meet, *discharge* or *punish*¹ the apprentice.

The above enactment is now construed to apply to *all* apprentices (1 *Stra.* 663; 1 *Bott.* 573); and the sessions for the county of Middlesex is deemed

pedient that any master or mistress should in any way discharge or dismiss from his or her service any parish apprentices, without the consent of such justices."

¹ It seems to have been adjudged, under this indefinite clause as to punishment, that the magistrates may inflict corporal chastisement on the apprentice, or commit him to hard labour in the house of correction, or discharge him, at their discretion.—1 *Saund.* 313, 314.

to have jurisdiction under it, even though the master be a freeman of the city of London, notwithstanding sect. 40 of the Act respecting the privileges of London and Westminster. In the case of *Rex v. Col- Case.*
 lingbourne, (1 *Str.* 663) a question arose, whether the court of sessions at Hicks's Hall had jurisdiction to discharge an apprentice to a freeman of London, or whether he ought not to be discharged by the Mayor's Court only. The apprentice, it appeared, lived with his master *out of the city*, within the jurisdiction of the justices of Middlesex. The court confirmed the order of discharge, adding that it would be very inconvenient to compel apprentices to a freeman of London, living in distant parts, to come up to the Mayor's office to get discharged, and that the words of the statute gave the jurisdiction to the justices "where the master dwelleth."

An apprentice cannot be discharged on account of *illness*, even though of such a nature as to be deemed incurable. (1 *Str.* 99. 1 *Bott.* 572.) The master takes him for better and worse, and is therefore compelled to provide for him in sickness or in health (*ib.*) illness no ground of discharge.

But if a child prove an *idiot*, incapable of learn- Idiotry.
 ing a trade, this would be a good ground of discharge (1 *Bott.* 570.)

As the justices may discharge the apprentice from his master for ill usage, so also they may discharge the master from the apprentice for evil and disorderly behaviour in the latter. (1 *Saund.* 313, 314.) Powers of justices.

The Registry of parish apprentices is provided for by 42 Geo. 3. c. 46. which, after reciting that by 43 Eliz. c. 2. overseers are empowered to bind out poor children, and that it would tend to the benefit of such children if a register were kept of the number, &c. so bound, enacts in Registry of parish apprentices.

Sect. 1. That the overseers of the poor of every parish, &c. appointed by virtue of said 43 Eliz. shall keep a book, at the expense of the said parish, &c. and enter therein the name of every child who shall be bound out by them as an apprentice, together with the several other particulars in manner and 42 Geo. 3. c. 46.
Overseers to keep a book for entering the names of children apprenticed by them;

And each entry to be laid before two justices, and to be approved and signed by them.

form required by this act; and every such entry shall be laid before two justices, who shall signify their assent to the indenture of apprenticeship of every such child, at the time when such indenture shall be laid before them as required by the said recited act; and each entry in the said register shall, if approved of by such justices, be signed by them according to the form marked in the schedule.

Penalty on overseers for not providing such book, or neglecting to make such entries, &c.

Sect. 2. That if any overseer shall refuse or neglect to keep such book, or to make such entry; or shall destroy, or wilfully obliterate or alter, any such entry, so that the same shall not be a true entry of the particulars; or shall make or permit a false entry; or shall not produce such book before such justices; or not deliver the same to his successor in office within fourteen days after his appointment; or if such successor shall refuse to receive the same when offered; every such person shall, for every offence, on being convicted thereof on oath before two justices, forfeit the sum of 5*l.*, to be recovered by distress, and applied for the use of the poor; and if sufficient distress be not found, or if such penalties be not forthwith paid, such offender may be committed to gaol for not exceeding one calendar month, unless such penalties be sooner paid.

Books may be inspected, &c. by any person on payment of 6*d.*;

And shall be evidence of indentures, if lost, &c.

Sect. 3. That any person, at all reasonable hours, may inspect such books in the hands of the overseers, and take a copy of any entry therein, on payment of *sixpence* (except in the case of justices, who may at all times inspect such book *gratis*); and every such book shall be deemed sufficient evidence in all courts of law of the existence of such indentures, if lost or destroyed.

Sect. 4 prescribes the form of conviction.

On assignment of apprentice taking place, entry thereof, &c. to be made in such book.

Sect. 5. That if any such apprentice shall be assigned or bound over to any other master or mistress by virtue of 32 Geo. 3. c. 35. the overseer, or parties to the assignment, shall insert in the said book the name and residence of the master or mistress to whom such apprentice shall be assigned, together with the other particulars, &c.: and for non-performance thereof, every such overseer shall be liable

to the same penalties as if such apprentice had been originally bound to such master or mistress.

Sect. 6 recites that by various Acts the like powers are given to certain persons therein named, for binding out parish apprentices, as are given to the overseers of the poor; and enacts therefore, that all persons having such powers shall be subject to the like penalties, &c. for non-compliance with the provisions of this Act for registering apprentices bound out or assigned by them, to which overseers are subject by virtue of this Act.

Persons having the like powers as overseers to bind out apprentices, to be subject to the like penalties for contravention of this act.

Sect. 7. Persons considering themselves aggrieved by any thing done in pursuance of this Act, may appeal to the sessions within four calendar months after the cause of such appeal, on giving to the party appealed against ten days' notice of such appeal, and of the matter thereof; and the sessions shall determine in a summary way, granting reasonable costs and expenses to either party.

Persons deeming themselves aggrieved may appeal to the sessions.

Incorporated District Apprentices.

The 20 Geo. 3. c. 36. after reciting that several Acts have been passed for the relief and employment of the poor in *particular incorporated hundreds or districts* in England, whereby power is given to apprentice poor children, and that doubts have arisen whether persons are compellable to receive and provide for such poor children appointed to be apprenticed to them in pursuance of the said Acts, provides by

Incorporated District Apprentices. 20 Geo. 3. c. 36.

Recital of object of the act.

Sect. 1. That persons to whom any poor children shall be appointed to be bound apprentice in pursuance of such Acts as above referred to, shall receive and provide for such children, according to the indentures executed by the directors and acting guardians of the poor for such hundreds or districts, for the binding of such poor children, in like manner as persons are obliged to receive and provide for poor children appointed to be bound apprentices by church-

All persons to whom children are appointed to be bound in particular incorporated districts, compellable to receive them, &c.

Penalty for neglect or refusal, and how to be applied, &c.

Appeal.

No person compellable to take such children, unless inhabitants and occupiers of land, &c. in the parish.

Bastards born in the house of industry, to belong to the mother's parish.

Occupiers of land, &c. to be deemed inhabitants.

Who compellable to take, and who exempt.

Mode of binding.

wardens, &c., and also to execute the counterpart of such indentures; and if any person shall refuse or neglect to receive and provide for any such poor child, or to execute the counterpart of such indenture, such person, on proof by oath before two justices of such neglect or refusal, shall forfeit and pay to the directors and acting guardians of the poor for such incorporated hundred or district, to be applied for the relief of the poor within the same, the sum of 10*l.*; such penalty to be levied by distress and sale, with power, however, of appeal to the sessions, whose order shall be final.

Sect. 2. That nothing in this Act shall be construed to compel any person to take any such poor child apprentice, unless such person shall be *an inhabitant and occupier of lands, tenements, or hereditaments, in the parish to which such child belongs*; and that *all bastard children*, born in the house of industry within any such incorporated hundred or district, shall be deemed to belong to the parish or place where the mother of such bastard child was legally settled.

Under this statute it has been decided by the Court of King's Bench, in reference to the words "*inhabitant and occupier*" in the 2d section, that persons *occupying* land, &c. in the parish, are to be deemed *inhabitants* for the purposes of this act, although they do not reside in it. The Court said that "incorporated districts under particular statutes were to be governed, as to binding out apprentices, by the same rule as other places. That for some purposes inhabitants and occupiers were synonymous terms, and that where a person derived a benefit from property which he occupied in a parish, he was liable to contribute to the ease of it." (3 Term Rep. 523.)

As to *who may be compelled to take* apprentices, and who may *claim exemption*, the law is the same with respect to incorporated districts as to parishes generally.—See therefore *Ante*, p. 9.

And with regard to the *mode of binding* incorporated district apprentices, see *Ante*, p. 2 to 8.

Public Charity Apprentices.

By the 7 Jac. c. 3. s. 2. it is enacted, that "*all sums of money given by any person to be continually employed for the binding out apprentices, shall be employed, unless otherwise directed by the donor, in manner following: namely, all corporations of cities, and boroughs and towns corporate, and in places not corporate, the parson or vicar, constables, churchwardens, collectors, and overseers, or the most part of them, shall have the nomination and placing out of such apprentices, and the employment of such monies, and if they shall not employ the same accordingly, every person offending shall forfeit 3*l.* 6*s.* 8*d.*, half to the poor, and half to him that shall sue, by action of debt, bill, plaint, or otherwise.*"

Public Charity Apprentices,
7 James, c. 3.

By whom sums of money given to be employed for ever in the binding out of apprentices, are to be so appropriated.

Penalty for misapplication.

Sect. 3. That the master who shall receive the money shall be bound with one or two sureties in double the sum, to such corporation or other persons, on condition to repay it at the end of seven years, or within three months thereof; and if the apprentice shall happen to die within the seven years, then within one year after such death; and if the master shall die within the seven years, then within one year after such master's death.

The bond to be entered into by the master.

Sect. 4. That the said money shall always be put forth in three months after it shall come to the said parties' hands; and if there be not then fit persons to be bound apprentices within the places where the money is given to be employed, it shall be disposed of in binding some of the poorest children in any adjoining parish, after the same manner.

How and when such monies to be applied.

Sect. 5. That choice shall always be made of the poorest children; and that no such apprentice, when bound, shall be above fifteen years of age.

Poorest children to be preferred, and none to be above 15 years old.

Sect. 6. That the said persons, in places not corporate, shall yearly, within a month after Easter, account, before two justices at least, for the said monies, and within ten days after, yield up the monies and bonds remaining in their hands.

When, and to whom, churchwardens, &c. to account.

Sect. 7. And if any of the trustees shall break

Power of pe-

petition, &c. to Lord Chancellor, in case of breach of trust.

their trust, or commit any offence for which no penalty is given by this Act, any person may petition the Lord Chancellor, who may issue a commission, to hear and determine the same, and may levy the money misemployed upon such defaulters, or otherwise upon such able inhabitants of the place, as they shall think fittest; and persons aggrieved may appeal to the Lord Chancellor.

Remarks on the above statute.

The above antiquated, unintelligible, and, in many points, absurd and unjust statute, we have taken almost verbatim from Mr. Chitty's recent edition of "*Burns' Justice*." That able editor quotes it without a comment. It seems, however, scarcely possible for any common-sense unprofessional reader to pass it over without expressing an anxious hope that a statute, enacted originally with the best of motives, though certainly not in the most select or intelligible language, and which relates to so important a subject as the application of money given by charitable persons to be appropriated to the benefit of the poor, cannot *much longer* form part of our code of laws without revision and amendment. As it stands at present, there appears to be every chance afforded for *depredation* on the fund, without the possibility of adequate *punishment*. What signifies the fine of 3*l.* 6*s.* 8*d.* on a collector, &c. if he walk off with *the whole of the money*? (which appears to be *possible*)—Or what satisfaction to the parishioners is it, that if "*any of the trustees break their trust*," a commission issued by the Lord Chancellor may visit their defalcation, either on *them*, if they can *catch* them, or otherwise upon "*such able inhabitants of the place as they shall think fittest*?" Surely some of our benevolent legislators might be well employed in suggesting amendments to such an Act as this!

Stamp-duty.

All apprenticeships and assignments at the charge of any public charity, are, like parish indentures, exempt from any stamp-duty. (55 Geo. 3. c. 184.)

VI. Apprentices to the Sea-service.

In general no apprentice can be compelled to go beyond sea, unless it be so expressly agreed, or the nature of his apprenticeship import it—as if bound to a merchant-adventurer or sailor. (1 Bott. 569.)

Apprentices to the sea-service.

But by stat. 2 & 3 Ann. c. 6. s. 1. two justices, with the head officers of corporations, and churchwardens, &c. of parishes and townships, with the consent of such justices or head officers, may bind any boy of the age of ten years and upwards, who shall be chargeable to such parish, &c. or whose parents shall be chargeable, or who shall beg for alms, to be an apprentice to the sea-service, to any *subject*, being a master or owner of a ship or vessel, until he shall attain 21.

2 & 3 Ann. c. 6. What children may be bound apprentices to the sea-service.

And by the 6th section of the same statute it is provided, that every person to whom any poor parish boy shall be put apprentice by the 43 Eliz., may, with the consent of two justices dwelling near the parish, or of the chief officer in a corporation, at the request of the master, his executors, administrators, or assigns, by indenture assign over such boy apprentice to any master or owner of a ship or vessel for the residue of the term of his apprenticeship¹.

Parish boys bound apprentice under 43 Eliz. may be turned over to the sea-service.

And by the 8th sect. *every master or owner of a ship, from 30 to 50 tons burthen*, is compellable to take *one such apprentice*, and *one more for the next 50 tons*, and *one more for every 100 tons*, such ship shall exceed the burden of 100 tons; under penalty of 10*l.* to the poor of the parish whence the boy was bound.

What number of parish apprentices, masters, &c. of ships compellable to take.

But by 4 Ann. c. 19. s. 16. no master shall be obliged to take any such apprentice under 13 *years of age*, or who shall not appear to be *fitly qualified, as to health and strength of body*, for the sea service.

4 Ann. c. 19. Not to be compelled to take sickly children, or any under 13.

By stat. 5 Eliz. c. 5. s. 12. every owner of a ship or vessel, and every householder exercising the trade of the seas by fishing or otherwise, and every gunner,

Every master, gunner, &c. may take apprentices for 10 years.

¹ This seems an unjust section, affording the master of any poor parish apprentice the opportunity of continually threatening to send him to sea, if not the absolute power of executing such threat.

Indentures
must be en-
rolled, &c.

Fee for enrol-
ment.

4 Geo. 4. c. 25.
[1st Jan.
1834.]

Number of
apprentices
on board
ships to be in
proportion to
their ton-
nage.

Enrolment.

This act not
to affect other
acts.

Penalty on
master, &c.
for not enrol-
ling inden-
tures, or suf-
fering ap-
prentice to
quit his ser-
vice.

commonly called a cannoneer, and every shipwright, may take apprentices for ten years, or under; and every apprentice so taken, being above seven years of age, shall be by the same covenants bound, ordered and used to all intents, according to the custom of London, so that the covenant, or bond of apprenticeship, be made by writing indented, and *enrolled* in the town where the apprentice shall be inhabiting, if a town corporate, and if not, in the next corporate town; for which enrolment shall be paid not above 12*d*.

By the 4 Geo. 4. c. 25. s. 2. every master of any merchant ship exceeding 80 tons burden, shall have on board at clearing out from any port in the United Kingdom, apprentices in the following proportion to her tonnage; namely, for every ship exceeding 80 and under 200 tons, one apprentice at least; 200 and under 400, two apprentices; 400 and under 500, three; 500 and under 700, four; 700 and upwards, five; all of whom shall, on being indentured, be under 17 years of age. And every apprentice so to be employed on board any ship as above described, shall be duly indentured for at least four years, and his indenture shall be duly enrolled with the collector and comptroller at the custom-house of the port from whence any such ship shall first clear out after the execution.

Sect. 3. That nothing in this act shall alter or affect any act now in force, and not amended or repealed by this act¹, whereby any ships are required to have on board apprentices, but such apprentices shall be reckoned as part of the number required by this act.

Sect. 4. Every owner or master neglecting to enrol such indentures, or who shall suffer any such apprentice to leave his service, except in cases of death or desertion, sickness or other unavoidable cause, to be certified in the log-book, shall for every

¹ By the 1st section of this act, so much of 37 Geo. 3. c. 73. as compels ships trading to the West India colonies to have apprentices, is repealed.

offence forfeit 10*l.*, one half by the owner and the other half by the master; which penalties may (by sect. 8.) be recovered by distress and sale, and in default of distress offender may be committed to gaol for three months, unless sooner paid.

Sect. 5. That every such master or owner may employ such apprentice at any time in any vessel of which he may be master or owner, and may also, with the consent of such apprentice, if above the age of 17, and if under that age with the consent of his parents or guardians, transfer such apprentice, by indorsement of indentures, to any other master, &c. of any registered vessel; which indorsement, by the 6th sect., is directed to be free of stamp duty.

How to be recovered, &c.

Apprentice may be transferred to other ship, or to other master, in certain cases.

No stamp duty on indorsement.

By 7 & 8 Geo. 4. c. 56. s. 7. it is enacted, that 2*s.* only shall be charged as the stamp on the indentures of any apprentice bound to serve at sea in the merchant service.

Stamp on indentures. 7 & 8 Geo. 4. c. 56.

By sect. 2. of stat. 2 & 3 Ann. c. 6. all churchwardens, &c. shall pay down to the master, at the time of binding such apprentices, the sum of 50*s.* for clothing and bedding—which shall be allowed in their accounts.

2 & 3 Ann. c. 6. Money to be given with sea apprentices.

And by the 17th sect. of the same statute, when any such apprentice shall be impressed¹, or voluntarily enter, into the king's service, the owner or master, his executors, &c., shall be entitled to able seaman's wages for such of his apprentices, if found qualified, notwithstanding their apprenticeship.

If impressed, master to have wages.

And by the 12th sect. two justices near the port, or the mayor, &c. of corporate towns adjoining any port at which ships shall arrive, may determine all complaints of ill usage from the master to such apprentices, and make order therein as in the case of other apprentices.

Differences between master and apprentices.

By 4 Ann. c. 19. s. 16., if any master, who has

4 Ann. c. 19.

¹ Apprentices to the sea-service, as well as apprentices in general, are, by several statutes, protected against naval impressment. And by 4 Geo. 4. c. 10. s. 101. "if any apprentice, concealing his apprenticeship, enlist into the army, he is subject to two years' imprisonment and hard labour, and may be indicted for obtaining money under false pretences."

Master dying during the term. been *obliged* to take a parish boy apprentice, shall die during the term, his widow or personal representative may assign such apprentice to any other master not having his full complement.

VII. Chimney Sweepers' Apprentices.

Chimney sweepers' apprentices.

Church-wardens may bind parish children, of a certain age, and with consent, &c., to chimney sweepers

Age to be inserted in indenture.

Penalties on masters having apprentices under the age of eight years.

Justices to determine complaints.

Six apprentices only to be kept at the same time. Name and address of master to be marked on cap worn by boys.

Penalty in either case if neglected.

Penalty on master, &c., for breach of covenants, on conviction, &c.

The statute which regulates the binding of poor children as apprentices to chimney sweepers, is the 28 Geo. 3. c. 48., which, by sect. 1., empowers churchwardens, &c. of parishes, with the consent of two justices, to bind any boys, of *eight years of age* and upwards, who, or whose parents, may be chargeable to the parish, or beg for alms, by and with the *consent of the parent*, to be apprentices to chimney sweepers, *until the age of sixteen*.

Sect. 2. That the age of the boy shall, as correctly as possible, be inserted in the indenture.

Sect. 4. That all indentures for so binding boys *under the age of eight years* shall be *void*; and any master convicted of keeping or employing apprentices under that age, shall forfeit not exceeding 10*l.* nor less than 5*l.*

Sect. 6. One justice may determine complaints, &c. as in other apprenticeships.

Sect. 7. That no chimney sweeper shall keep or employ *more than six apprentices at the same time*; and that the name and place of abode of every master or mistress shall be marked on a brass plate, affixed in front of a leathern cap, which every such apprentice shall wear when out on duty; and every such master, &c. shall forfeit for every apprentice so kept or employed beyond the limited number, or for neglecting to provide such cap, &c., a sum not exceeding 10*l.* nor less than 5*l.*

Sect. 8. That if any such master, &c. shall misuse or illtreat an apprentice, or if such apprentice shall have *just cause* to complain of the breach of any of the covenants, &c. of his indenture, a master or mistress, being convicted thereof before one or more justices of the county, &c., shall forfeit not exceeding 10*l.* nor less than 5*l.*

Sect. 9. That no such master, &c. shall let out to hire, or lend, by the day or otherwise, to any other person, for the purpose of sweeping chimneys, any such apprentice, nor cause any such boy to call the streets before 7 o'clock in the morning, nor after 12 at noon, between Michaelmas and Lady-day, nor before 5 in the morning, and after 12 at noon, between Lady-day and Michaelmas; under a penalty for every such offence not exceeding 10*l.* nor less than 5*l.*

Boys not to be let out to hire, nor to call the streets before or after certain hours.

Assessed Taxes.

The assessed taxes consist of the duties imposed on windows, inhabited houses, servants, carriages, horses, mules, dogs, armorial bearings, &c. They are annual duties, payable by half-yearly instalments, viz. on the 20th of September for the half year commencing from the 5th of April, and ending on the 10th of October, and on the 20th of March for the half year commencing from the 10th of October, and ending on the 5th of April.

Assessed taxes.

How payable.

As the assessments are severally delivered from the Tax Office, with the necessary warrant, to the collectors, they are to cause public notice to be given of the same, by affixing a notification on the door of the parish church or chapel of ease; and all persons interested in the certificates of assessment are to be permitted to have access to and examine the same, at any reasonable time in the day-time.

Collectors to give public notice of assessments.

The collector must also forthwith fill up and deliver to each of the persons charged by such assessments, a form of notice of his or her assessment, to be left at his or her dwelling-house or usual place of residence.

Also to leave form of notice at each dwelling house.

The duties being payable half yearly at the times before stated, the collector is to *make demand* of the several sums from the parties charged, either at the places of their last abode, or on the premises charged with the assessment, as the case may require, *within ten days after the said duties shall respectively become payable*;

When to be demanded.

and upon payment thereof shall give acquittances, without taking any thing for such acquittances except the stamp duty to which the same are liable.

If not paid,
collector to
levy by
distress.

And if any part of such duties shall not be paid or satisfied on the days before mentioned, in every such case the collector is not only empowered, but strictly enjoined, to levy the same by distress; his instructions being, in all cases of demand and non-payment, to distrain upon the person or persons chargeable by his or their goods and chattels, either upon the messuages, lands, tenements and premises charged with the said duties, or elsewhere within such collector's ward, parish, or place. And the distress so taken is to be kept for four days, at the cost and charges of the party distrained on; and if the sum due shall not be paid within the said four days, the distress is to be appraised by two or more of the inhabitants where the same shall be taken¹, or other competent persons, and there sold for payment of the same; the overplus, if any, after deducting the said duty and costs, to be restored to the owner of such goods.

How distress
to be made.

How collector
should act in
breaking
open a
house.

If the collector should find it necessary to break open a house for the purpose of making such distress, he must first obtain a warrant under the hands and seals of two or more of the commissioners of taxes for that purpose, and having obtained that, must call to his assistance the constable, tything-man, or headborough of his ward, parish, or place, which officers are severally required to assist in making such distress, as they shall answer to the contrary at their peril.

If sufficient
distress can-
not be found,
notice to be
given to dis-
trict commis-
sioners, who
may commit
defaulters.

In cases where the collector cannot find sufficient distress whereon to levy the duties payable, he is required to cause immediate notice thereof to be given to the commissioners of his district, in order that they may by warrant commit the defaulter to the common gaol; and if any question or difference

¹ It should here be particularly noted, that a party distrained on for assessed taxes has no option of *replevying*, as in cases of distress for rent.

shall arise upon taking any such distress, the same is to be determined by two or more of the said commissioners.

And in levying for the duties in arrear, the collector is in all cases particularly to observe, that the goods or chattels belonging to any person so in arrear cannot be lawfully taken by virtue of any execution or other process, warrant, or authority, or by virtue of any assignment, on any account or pretence whatever, *(except at the suit of the landlord for rent,)* unless the party at whose suit the said execution or seizure shall be sued out or made, or to whom such assignment shall be made, shall, before the sale or removal of such goods or chattels, pay the collector all arrears of the said duty which shall be due at the time of seizure, or which shall be payable for the year in which such seizure shall be made. And the collector is particularly directed in all such cases, *(which comprehend all cases whatever where by law the goods of another can be taken or seized, whether by fieri facias or other writ of execution for the debt, or under commission of bankrupt, or by assignees, or by bill of sale, except the case of a landlord seizing for rent due on the premises)* to apply to the officer, or person or persons in possession of any goods or chattels, and to demand payment of those duties *for one whole year*, whether the days of payment shall have arrived or not. But he cannot claim payment for *more* than the duties for *one year*, and if *more are due* he must be satisfied with the payment of *duties for one year*; but in case of refusal to pay the duties, which ought to be paid on demand, so far as one year's duties, the collector is authorised and required to distrain the said goods and chattels, notwithstanding such seizure or assignment, and proceed to a sale as before directed; and on failure of such distress, he will either be held personally liable to pay the said duties, or they must be re-assessed upon the parish; and no promise to pay, or security for payment, given to the collector, will justify him in failing forthwith to distrain sufficient of

Levies for assessed taxes to supersede all executions, &c. except for rent due to the landlord.

Unless all arrears of taxes be paid previous to removal of goods.

In such cases, payment for one whole year, whether due or not, to be demanded.

But not for more, though more be due.

Liability of collector in not acting rigidly herein.

the goods and chattels to answer the taxes due, with reasonable expenses.

Persons removing without paying taxes, or leaving sufficient goods, liable to a penalty of 20*l*.

If any person charged with any of the said duties shall remove out of the parish without first paying the same, or leaving sufficient effects whereon to levy, the collector is to cause immediate notice of such removal to be given to the commissioners of the district, *in order that the said duties, and a penalty of twenty pounds, may be levied in the ward, parish, or place to which such persons shall have removed.*

How duties to be levied in cases of change in the occupation of premises.

The duties charged on windows or lights, and on inhabited houses, are enforced for one whole year, and therefore where any change in the occupation of any house, &c. shall take place after the assessment shall be made, the collector is in that case to levy the duties upon the occupier or occupiers, landlord or landlords, owner or owners, for the time being, or on both, or all of them, according to their times of possession thereof, without any new assessment, notwithstanding such change in the occupation of such house, &c. for the year that such house shall have been assessed; but where a tenant of any house, &c. shall quit the same on the determination of the lease or demise thereof, after an assessment shall be made, and notice thereof shall have been given, the collector must inform the commissioners of the district, in order that the duty thereon may be discharged by the said commissioners for the remainder of that year, in case it shall appear to them at the end of such year, that such house, &c. shall have continued wholly unoccupied during the remainder of such year.

How, on a tenant's quitting premises at the determination of his lease.

Where duties are charged to landlord, &c. and not occupiers, collector may distrain on occupiers, if landlord do not pay.

Where any dwelling-house let in different apartments, stories, tenements, lodgings, or landings, is charged to the duties on windows or lights, or inhabited houses, or either of them, on the *landlords or owners*, and *not the occupiers* thereof, and the landlord or owner shall not RESIDE within the parish, or shall not have sufficient goods or chattels therein whereon the said duties may be levied, if the same be not paid, the collector is authorised to make his

demand of the tenants or occupiers thereof, or any of them, and on non-payment to levy on the goods and chattels of such tenants or occupiers by distress and sale, as if such duties were charged on them ; and such tenants and occupiers are required and authorised to pay the same, and to deduct the amount thereof out of the rent due to the landlord or owner.

But such occupiers may deduct the same from their rent.

And if any person so chargeable be under the age of 21, or if any person so chargeable shall die, in such case the parents and guardians of such minors, and the executors and administrators of such deceased persons, upon default of payment, are liable in their stead ; and in default of payment by such parents or guardians, the collector is required to proceed against them in the same manner as against other persons making default ; and in default of payment by such executors or administrators, the collector is to levy the duties on the goods of the testator or intestate, or in case of unlawful administration of such goods, then on the proper goods of the executor or administrator.

Who liable in case of death of persons chargeable, or in cases of minors.

How levy to be made in such cases.

In making payments to the receiver-general, and accounting for the said duties, the collector is to observe the following rules and directions :

How collector is to account with the receiver-general.

He is to pay to the receiver-general, or his authorised deputy, all such duties as he shall have levied on the respective days before mentioned, at the times appointed for payment thereof next after his receipt of the same, and finally he is to account to the receiver-general, or his deputy, for one moiety of the said duties, on the day to be appointed next after the 10th of October in each year, and the remaining entire moiety on the day to be appointed next after the 5th of April in each year ; which days are annually appointed by the tax commissioners, and inserted in the printed instructions issued by them to the collectors.

If the collector shall not, at or before the times limited for levying the said duties, have received or levied the same after demand, or shall not then account for the same in the moieties before directed, he is bound to deliver to the receiver-general or his de-

If duties be not levied within the limited time, a schedule of defaulters to be delivered

to receiver-general.

To remain with district commissioners for 40 days.

Notice of such schedule to be given to the several defaulters, under penalty of 20*l*.

Payments may be made within the 40 days.

Supplementary assessments on account of surcharges or penalties, how to be levied and accounted for.

Collector advancing duties for other persons, may, within 6 months, levy for the same as though unpaid.

If collector neglect to ac-

puty, under penalty of a sheriff's process against him, which in every case of neglect the court of exchequer is bound to issue, a schedule in writing, signed by him, containing the christian and surname of each defaulter, and the respective sums then in arrear from such persons, with an affidavit subscribed by him, to be made on oath or affirmation, that such sums have been demanded from, are due from, and wholly unpaid by, the persons charged therewith. And such schedules are to be delivered by the receiver-general, or his deputy, to the commissioners of the district, and to remain with them for the space of 40 days and no longer. And the collector is to give notice of the schedule to the several defaulters named therein, in such manner as the commissioners shall direct, under a penalty of 20*l*. for neglect of duty; and every such defaulter may then immediately pay his or her arrears, and require a receipt for the same, which receipts the collector is required, at the end of such 40 days, or sooner, to deliver to the commissioners, as their authority for discharging such arrears from the schedule.

Whenever the collector shall have delivered to him by the commissioners the duplicate of any supplementary assessments made in pursuance of any surcharges or of any conviction for penalties, he is particularly required to demand, collect, or levy, the full amount of the said duties at such time previous to the 5th of April following, or within 21 days thereafter, as to have the same ready to be paid or accounted for to the receiver-general or his deputy on the day to be appointed for its or their receipt next after the said 5th of April.

If the collector shall have advanced or paid to the receiver-general or his deputy any sum of money on account of the said duties assessed on any other person or persons, he is empowered in default of repayment to him, *at any time within six calendar months after such payment*, to levy the said duties in the manner he might have levied the same before such payment, and as if the same had not been paid.

In case the collector neglect to pay or account for

the said duties to the receiver-general as before prescribed, on his failure and the cause thereof being certified to the Barons of the Exchequer, they are authorised to issue a *distringas* for levying on such collector's goods and chattels.

count, the Exchequer may issue a *distringas* against his goods.

And in default of payment by the collector to the receiver-general or his deputy in manner aforesaid, of the several sums by him received, or in case of his refusal to give an account to the commissioners for the district of the sums by him collected, they are authorised by warrant under their hands and seals to levy the sums so received by distress and sale of the collector's goods and chattels, and otherwise to proceed against his person, and seize and sell his estates, whether real or personal, in possession, reversion, remainder, or expectancy, or which may descend to his heirs, executors, or administrators.

Or commissioners of his district may levy by distress and sale of his estates, whether real or personal, &c.

To which end the collector is further required (if the commissioners think fit) to give security to them for due payment to the receiver-general or his deputy, of all such sums as shall come to his hands, and on failure thereof the commissioners may appoint another collector in his stead; and if the collector shall detain in his hands any of the monies so collected, and neglect to pay over the same to the receiver-general or his deputy, he will also be liable to an Exchequer prosecution as a debt upon record to His Majesty, with all costs and charges.

Collector to give security, if required; or in default may be removed.

Collector detaining monies liable to Exchequer process.

And whenever a collector shall detain in his hands any sum so received by him, and shall not duly account to the receiver-general or his authorised deputy, at the receipt to be holden next after the same shall have been received, and whenever any sum or sums of the arrears of taxes so collected shall be ordered to be paid by the district commissioners, and shall not be so paid, the collector is liable to a penalty of 50*l.* and a further penalty at the rate of 5*l.* per cent. per annum, for the whole sum detained, with all costs and charges.

Also to a penalty of 50*l.* and to payment of interest for amount detained.

Or if the collector shall advance or lend any person any of the money so received by him; or if he shall apply any part of the same to his own use; or deposit

Collector lending or using any part of duties,

so that the sum be not duly paid, liable to 50*l.* penalty with costs.

Collector to attend commissioners, when required, and to answer their questions on oath, &c.

Collector bound to deliver an account of receipts and payments to churchwardens, &c. if required.

Penalties for collecting from false rate-books, or altering the same, &c.

or deliver over the same to any other person, so that the full amount thereof shall not be paid the receiver-general at the time the same ought to be paid, he will for every such offence forfeit the sum of 50*l.* with all costs and charges.

The collector is bound to attend the said commissioners whenever required, and to answer all such questions, upon oath or otherwise, as shall be by them demanded of him touching the execution of his office, and to produce to them his assessment accounts and vouchers for payments, and in all other respects duly and diligently to obey such orders as they shall make; in default whereof he will incur the penalty of 50*l.* and be liable to be dismissed from his office.

The collector is likewise bound, whenever thereto required by the churchwardens and overseers or guardians of the poor, or any two of them, or by any select vestry, or any seven of them, to deliver to them an account in writing of the sums received by him and of all arrears thereof, and of the sums remaining in his hands, and of the payments made by him to the receiver-general or his deputy, in default whereof he will incur a penalty of 20*l.* for the use of the poor of the parish.

If the collector shall gather the said assessments by any rate or book other than that signed and allowed by the commissioners of the district, or any two or more of them, or shall receive any duties from any person not charged therewith in the said assessments, or shall collect from any person more than is actually charged therein or in such rate or book, or shall not duly pay the receiver-general the whole of the monies he shall collect, or shall fraudulently alter, or cause to be altered, such rate or book, after the same shall have been signed and allowed by the commissioners, he will for any such offence be liable to a penalty of 100*l.*¹

¹ Penalties of this description in large amounts, generally in six penalties amounting to 600*l.* being 100*l.* for each distinct offence, were a few years since enforced against numerous collectors by verdicts in the court of Exchequer, on prosecutions instituted by his Majesty's Attorney-general.

If any person appointed to be a collector shall refuse or neglect to take upon him the office, or to perform any of the duties thereof, he will for every offence incur a penalty of 20*l*. Penalty for neglect of duty, or refusing office.

Rules for Compositions for Assessed Taxes.

The compositions for assessed taxes are to be paid to the collector by the persons charged therewith by two instalments; namely, the first instalment on or before the 10th of October, and the second on or before the 5th of April in each year; and the collector is to make demand for the same in like manner as for the duties of assessed taxes, and if he shall not receive the same at or before the times before mentioned, he is to levy and raise the same under the like powers and authorities as he is authorised to use in the recovery of the duties of assessed taxes. When compositions for assessed taxes are to be paid. If not so paid, to be levied for as in other cases.

Every composition in respect of the duties charged on a dwelling house from which the party making the same shall remove, is to cease and determine on the 5th of April next after such removal, and any composition in respect of any other of the duties, with any person who shall die, or become bankrupt, or insolvent, or shall assign his or her goods or effects, is also to determine on the 5th of April next after such death, bankruptcy, insolvency, or assignment. But all persons so having compounded and removing from their dwelling house, in respect of which such composition shall have been made, and the executors, administrators, or assigns, of persons dying, or becoming bankrupt or insolvent, and the assignees of persons assigning their effects, are bound to the due and punctual payment of all sums accruing due or in arrear at the times of such removal, death, bankruptcy, insolvency, or assignment, which shall be payable under such composition for the year ending the 5th of April next after such removal, &c.; and in case of refusal to pay the same when due, power and orders are given to the collector to distrain such goods, and proceed to the sale thereof in the same manner as with any When compositions on a dwelling-house to cease, if parties remove from the premises. When compositions for other duties with parties who die, or become bankrupt, &c. are to cease. If not duly paid, collector to distrain.

other goods distrained under the Acts relating to the Assessed Taxes.

Appeals against Assessed Taxes.

For the purpose of enabling persons who feel themselves aggrieved by any assessment, the respective collectors are, within ten days after the times and places have been appointed by the commissioners for the hearing of appeals, to cause public notice thereof to be given in the parish church or chapel of the place, immediately after divine service on Sunday, and also by fixing up a like notice on the doors thereof on the same day.

And for the purpose of enabling parties aggrieved to prepare themselves for the hearing by the commissioners, the collectors are to permit all persons interested in the assessments to have access to them, and to examine the same at any reasonable time in the day, as far as they are respectively interested therein.

But all persons who think themselves aggrieved by any charge or surcharge, must, prior to the appeal to the commissioners, give ten days' previous notice to the surveyor, or one of the assessors.

Under these clauses, an appeal must be preferred on the day appointed by the commissioners; it cannot be made after the expiration of the year within and for which the tax is to be collected. 6 *Term Rep.* 423.

By the 48 Geo. 3. c. 141. No. III. rule 6. all appeals against the first assessment in every year shall be heard and determined between the 20th of August and the 10th of September following; and by the same Act, No. IV. rule 2. all appeals against surcharges shall be heard and determined between the 20th of January and the 20th of February following.

ASSESSED TAXES.

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TABLES OF ASSESSED TAXES.

RULES FOR CHARGING THE SAME, AND EXEMPTIONS.

DUTIES ON WINDOWS ¹ .								
No. of Win.	Duty per House per Year.			Number of Windows.	Duty per House per Year.			
	£	s.	d.			£	s.	d.
8	0	16	6	..	35	11	18	3
9	1	1	0	..	36	12	6	9
10	1	8	0	..	37	12	15	3
11	1	16	3	..	38	13	3	6
12	2	4	9	..	39	13	12	0
13	2	13	3	40 to	44	14	8	9
14	3	1	9	45 ..	49	15	16	9
15	3	10	0	50 ..	54	17	5	0
16	3	18	6	55 ..	59	18	13	0
17	4	7	0	60 ..	64	19	17	9
18	4	15	3	65 ..	69	21	0	3
19	5	3	9	70 ..	74	22	2	6
20	5	12	3	75 ..	79	23	5	0
21	6	0	6	80 ..	84	24	7	6
22	6	9	0	85 ..	89	25	10	0
23	6	17	6	90 ..	94	26	12	3
24	7	5	9	95 ..	99	27	14	9
25	7	14	3	100 ..	109	29	8	6
26	8	2	9	110 ..	119	31	13	3
27	8	11	0	120 ..	129	33	18	3
28	8	19	6	130 ..	139	36	3	0
29	9	8	0	140 ..	149	38	8	0
30	9	16	3	150 ..	159	40	12	9
31	10	4	9	160 ..	169	42	17	9
32	10	13	3	170 ..	179	45	2	6
33	11	1	6	180		46	11	3
34	11	10	0	and for every dwelling-house which shall contain more than 180 windows or lights, for every window or light exceeding 180, 1s. 6d.				

¹ These duties are imposed by 6 Geo. 4. c. 7; sect. 1 of which takes off the window-tax on houses having *less than 8 windows.*

Rules for charging the Window Duties.

To be charged annually. By the 48 Geo. 3. c. 55. it is enacted, first, that the above duties shall be charged annually in respect of the windows or lights in every dwelling-house, with the household and other offices enumerated therein.

Skylights, &c. Second.—All skylights, and all windows or lights, however constructed, in staircases, garrets, cellars, passages, and all other parts of dwelling-houses, to what use or purpose soever applied, and whether such windows or lights shall be in the exterior or interior parts of such dwelling-houses, to be charged to the said duties.

Lights in offices. Third.—Every window or light in any kitchen, cellar, scullery, buttery, pantry, larder, wash-house, laundry, bake-house, brew-house, and lodging-room, belonging to or occupied with any dwelling-house, whether the same shall be within, or contiguous to, or disjoined from, such dwelling-house, shall be charged to the said duties.

Chargeable annually on occupiers, and to be in force for one whole year. Fourth.—The said duties to be charged yearly upon the occupier or occupiers of the houses, cottages, or tenements, in respect whereof the said duties shall be charged, and to be in force for one whole year from the fifth day of April, in the year in which the same shall be charged, to be levied on such occupier or occupiers, or on his, her, or their respective executors and administrators, except as hereinafter provided.

Change of occupation. Fifth.—Where any change in the occupation of any house, cottage, or tenement, shall take place after the assessment shall be made, then and in such case the duties hereby directed to be charged on the occupier or occupiers of houses, cottages, or tenements, for one year, shall be levied upon and paid by the occupier or occupiers, landlord or landlords, owner or owners for the time being, or on both or all of them, according to their times of possession thereof, without any new assessment, notwithstanding such change in the occupation of such house, cottage, or tenement, for the year that such house shall have

been assessed : provided, that, where a tenant of any house, cottage, or tenement, shall quit the same on the determination of the lease or demise thereof, after an assessment shall be made, and shall have given notice thereof to the assessor for the place, the duty thereon shall be discharged by the commissioners for executing this Act for the remainder of that year, in case it shall appear to the said commissioners at the end of such year, that such house, cottage, or tenement, shall have continued wholly unoccupied for and during the remainder of such year.

Sixth.—Where any dwelling-house is or shall be let in different apartments, tenements, lodgings, or landings, and shall be inhabited by two or more persons or families, the same shall nevertheless be charged as if such house were inhabited by one family or person only ; and the landlord or owner, landlords or owners of such house, apartments or tenements, are or shall be deemed and taken to be the occupier or occupiers of such house, &c. and shall be charged with the said duties : provided, that where the landlord shall not reside within the limits of the collector, or the same shall remain unpaid by such landlord for the space of twenty days after the same is due, the duties so charged may be levied on the occupier or occupiers respectively, and such payment shall be deducted and allowed out of the next payment on account of rent.

Houses let in apartments.
(See XIII. also.)

Seventh.—Every house, whereof the keeping is or shall be committed or left to the care or charge of any person or servant, shall be subject to the like duties as if it was inhabited by the owner or by a tenant ; and, if such person or servant shall not pay rates to the church and poor, the said duties shall be paid by the respective owners or tenants of the said house.

Houses left in charge of servants.

Eighth.—Every distinct chamber or apartment in any of the inns of court, or of chancery, or in any college or hall, in either of the universities of Oxford or Cambridge, or any public hospital, being severally in the tenure or occupation of any person or persons, shall be subject to the same duties as if the same was

Chambers in inns of Court.

an entire house, which duties shall be paid by the occupier thereof respectively ; provided, that every such chamber or apartment, which shall not contain more than seven windows or lights, shall be charged at the rate of 3s. 6d. for every such window or light.

Rooms in
public halls.

Ninth.—All dwelling rooms in any hall or office whatever, belonging to any person or persons, or to any bodies politic or corporate, or to any company, that are or may be lawfully charged with the payment of any other taxes or parish rates, shall be subject to the duties hereby made payable, and shall be respectively charged as dwelling-houses ; and the person or persons, bodies politic or corporate, or company, to whom the same shall belong, shall be charged as the occupier or occupiers thereof.

Partitions be-
tween win-
dows.

Tenth.—When a partition or division between two or more windows or lights, fixed in one frame, is or shall be the breadth or space of twelve inches, the window or light on each side of such partition or division shall be charged as a distinct window or light.

Windows
lighting two
places.

Eleventh.—Every window extending so far as to give light into more rooms, landings, and stories than one, shall be reckoned and charged with so many separate windows as there are rooms, landings, or stories enlightened thereby.

Dimensions
of windows.

Twelfth.—Every window or light, including the frame, partitions and divisions thereof, which by due admeasurement of the whole space on the aperture of the wall of the house or building, on the outside of such window or light, shall exceed in height twelve feet, or in breadth four feet nine inches, not being less than three feet six inches in height, shall be reckoned and charged as two windows or lights, except such windows or lights shall have been made of greater dimensions at any time prior to the fifth day of April, one thousand seven hundred and eighty five ; except also the windows or lights in such parts of dwelling-houses as are used for shops, work-shops, and warehouses, and except the windows or lights in the public room of any house licensed to sell wine, ale and other liquors by retail, which shall

be used for the entertainment of guests, and the windows or lights in farm houses specially exempted from the duties in the following schedule, marked (B), or in any dwelling-house not chargeable to the duties mentioned in the said schedule.

Thirteenth.—Where any dwelling-house shall be divided into different tenements, being distinct properties, every such tenement shall be subject to the same duties as if the same were an entire house, which duties shall be paid by the occupiers thereof respectively; provided that every such tenement in England, Wales, or Berwick-upon-Tweed, which shall not contain more than seven windows or lights, shall be charged at the rate of 3*s.* 6*d.* for every such window or light; and every such tenement in Scotland which shall not contain more than seven windows or lights, shall be charged at the rate of 3*s.* for every such window or light.

Distinct tenements.
(See also IV.)

Exemptions from the said Duties.

I. Any house belonging to his majesty, or any of the royal family, and every public office for which the duties heretofore payable have been paid by his majesty, or out of the public revenue.

Royal family,
public offices.

II. Any hospital, charity school, or house, provided for the reception and relief of poor persons, except such apartments therein as are or may be occupied by the officers or servants thereof, which shall severally be assessed, and be subject to the said duties as entire dwelling-houses.

Hospitals, &c.

III. The windows in any room of a dwelling-house, licensed according to law as a chapel for the purposes of divine worship, and used for no other purpose whatsoever:

Chapels.

Provided that every such hospital, charity-school, houses for the reception and relief of poor persons, or room licensed as a chapel as aforesaid, shall be brought into charge by the assessor or assessors, or in their default, by the surveyor or inspector, and shall be stated on the certificate of assessments as such; and on due proof of the fact before the com-

Proviso for
charging hos-
pitals, cha-
pels, &c.

missioners by the assessors, it shall be lawful for the commissioners for executing the said act to discharge such hospital, charity school, house for reception and relief of poor persons, and room licensed as a chapel, from the said duties, or such part thereof as is hereby intended to be exempted, in like manner as they are authorized to discharge the assessment on poor persons by this Act, but not otherwise.

Dairies.

IV. The windows or lights in any dairy or cheese-room belonging to and occupied with any dwelling-house, chargeable with the said duties, although the same shall be part thereof, which shall be used by such occupier or occupiers for the purpose of keeping butter or cheese, being their own produce, for sale or private use; provided that such windows or lights in such dairies or cheese-rooms shall be made with splines, or wooden laths, or iron bars, or wires, and wholly without glass, and that the occupiers of the dwelling-houses to which such dairies and cheese-rooms belong shall paint or cause to be painted on the outer door thereof, or on the outside of the windows thereof, or one of them, in large Roman letters, the words "dairy" or "cheese-room," as the case may require, and shall keep, and from time to time restore such words so painted distinctly legible, during all such time as such exemption shall be claimed; and provided, that such dairies or cheese-rooms shall not be at any time or times used to dwell in or sleep in by any person or persons, but shall be wholly kept and used for the several purposes hereinbefore mentioned; and provided also, that an assessment of all such windows or lights shall be duly made, and the fact be truly returned in the manner directed by this Act, in other cases of exemption from the said duties, so that the number of windows to be so exempted may be ascertained, and the exemption be allowed by the commissioners for executing this Act.

Glazed windows in a dairy.

The 57 Geo. 3. c. 25. and 6 Geo. 4. c. 7. s. 4. creates exemptions for *two* glazed windows in a dairy in a farm house.

Three win-

By the 4 Geo. 4. c. 11. s. 1. it is enacted, "that

so much of the duties on windows or lights *in shops or warehouses*, being parts of dwelling-houses chargeable by the said first-mentioned Act, in respect of any number *not exceeding three such windows*, or lights *in any shop or warehouse in the front or fronts*, and on the ground or basement story of every dwelling-house occupied by any person or persons in trade, who shall expose to sale, or sell any goods, wares, or merchandizes in any such shop or warehouse ; and all assessments thereon for and in respect of any year commencing from and after the respective days aforesaid, shall severally cease and determine.

Regulations for the giving of Notice respecting the Opening or Stopping up of Windows.

Windows or lights are not to be newly opened or made, nor are windows or lights (which are stopped up at the time when the assessment for the current year is made) to be re-opened ; neither are windows, which are charged in the assessment, to be stopped up, without six days' notice given to the surveyor or inspector of the district. Nor is any abatement to be allowed for any window stopped up after the commencement of the year for which the assessment is or ought to be made.

No window or light in any dwelling-house is exempt from the above duties, because it is stopped up, unless it shall effectually be so stopped up with stone or brick, or with the same kind of materials whereof that part of the outside of the walls of such dwelling-house chiefly consist, or unless it was effectually stopped up with plaster upon lath, previous to the 10th of May, 1798. Nor shall windows in the roof of any such dwelling-house be exempt, unless the same be effectually stopped up with materials similar to the outside of the roof thereof.

And when any window or windows shall be made, opened or restored, in any dwelling-house, cottage, or tenement, after the commencement of each year's assessment, and notice thereof shall be given, the assessment for the windows or lights in such house shall be amended in respect of any such additional

window or windows, and the duty shall be charged for the full number of windows for the remainder only of the year; but in cases of default of notice of the increase of windows, and also in cases where the additional window or windows therein shall be made or restored within and before the expiration of the past quarter of the year of assessment, the assessment or amended assessment shall be made for the whole of the year within which such additional window or windows shall have been made or restored.

Assessor's Rights of examining Number of Windows, &c.

Assessors have full power, at all seasonable times, to pass through any house, or to go into any court or yard, and externally to view the windows and lights in such house, and the premises occupied therewith, and to measure such windows or lights externally. And, where the house is divided into two distinct tenements, requiring each tenement to be separately assessed, the assessor has liberty to enter into the same, and to view, number, and measure, the windows therein, as well internally as externally.

Inhabited House Duty.

For every inhabited dwelling-house throughout Great Britain, which, with the household and other offices, yards, and gardens, therewith occupied and charged, are or shall be worth the rent hereafter mentioned by the year, there shall be charged the yearly sums following: namely,

	Value in the pound.
5 <i>l</i> . ¹ and under 20 <i>l</i> . rent, by the year	1 <i>s</i> . 6 <i>d</i> .

¹ The 6 Geo. 4. c. 7. s. 1. repeals the duty on inhabited houses under the value of 10*l*. per annum; and the 3 and 4 Will. 4. c. 39. (passed on the 14th August, 1833) contains the following important enactments.

"That upon all assessments for any year commencing from and after the 5th of April, 1833, where *any person in trade*, or number of persons in partnership in trade, shall be duly assessed to the said duties on inhabited dwelling-houses as the occupier or occupiers of any dwelling-house, or tenement, and shall *reside or dwell in part thereof only as a place of residence*, the same person or persons using or carrying on his, her, or

Value in the pound.

20*l.* and under 40*l.* rent, by the year 2*s.* 3*d.*

40*l.* rent, by the year, and upwards. . . 2*s.* 10*d.*

their trade in any other part or parts of the same dwelling-house, or tenement, (that is to say,) in any shop or warehouse in respect of which any number of windows, not exceeding three, ceased to be payable under an act passed in the 4th year of his late Majesty (by the Act here referred to, 4 Geo. 4. c. 11., persons in trade became exempt from the duties chargeable on windows or lights, for any number not exceeding three windows or lights, in any shop or warehouse in the front or fronts, and on the ground or basement story of every dwelling-house occupied by such person or persons in trade, who should expose to sale, or sell, any goods, wares, or merchandise, in any such shop or warehouse,) it shall be lawful for every such occupier to claim exemption from one entire moiety of the duties charged by such assessment on the rent or annual value of any such dwelling-house or tenement, and which shall be allowed in the manner herein after mentioned: but no exemption shall be granted to any person or persons whose name or names shall not be conspicuously or legibly painted, or so affixed to the front or fronts of the dwelling-house or tenement, in respect of which the exemption shall be claimed.—Sect. 1.

“That upon all assessments in the cases next herein mentioned, to commence from and after the 5th of April, 1833, the duties now payable under the provisions of the Acts in force for any dwelling-house herein-after described, which shall not fall within the exemption of the preceding provision, shall be reduced according to the respective rent or values, and to the amount following, (that is to say)

Where the rent or annual value of any dwelling-house shall be 10*l.*, the reduced duties amounting in the whole to the sum of £0 10 0

11*l.*, the reduced duties of. 0 12 0

12*l.*, the reduced duties of. 0 14 0

13*l.*, the reduced duties of. 0 16 0

14*l.*, the reduced duties of. 0 18 0

15*l.*, the reduced duties of. 1 0 0

16*l.*, the reduced duties of. 1 2 0

17*l.*, the reduced duties of. 1 4 0

18*l.*, the reduced duties of. 1 6 0

respectively, and no more;

all which reduced duties shall be deemed duties payable on inhabited dwelling-houses, according to the rules and provisions of the Acts in force for charging such duties.—Sect. 2.

“That the exemption for one moiety of the said duties on houses shall be extended and applied to occupiers of every dwelling-house duly licensed to sell beer, ale, wine, or other liquors therein by retail, although the room or rooms thereof in which any such liquors shall be exposed to sale, sold, drank, or consumed, shall not be a shop or warehouse as described in the 4 Geo. 4. c. 11.”—Sect. 3.

ASSESSED TAXES.

Rent.			At per Pound.		Total per Year.			Rent:			At per Pound.		Total per Year.		
£.	s.	d.	s.	d.	£	s.	d.	£	s.	d.	s.	d.	£	s.	d.
10	0	0	1	6	15	0	0	56	0	0	2	10	7	18	8
11	0	0	1	6	16	6	0	57	0	0	2	10	8	1	6
12	0	0	1	6	18	0	0	58	0	0	2	10	8	4	4
13	0	0	1	6	19	6	0	59	0	0	2	10	8	7	2
14	0	0	1	6	1	1	0	60	0	0	2	10	8	10	0
15	0	0	1	6	1	2	6	61	0	0	2	10	8	12	10
16	0	0	1	6	1	4	0	62	0	0	2	10	8	15	8
17	0	0	1	6	1	5	6	63	0	0	2	10	8	18	6
18	0	0	1	6	1	7	0	64	0	0	2	10	9	1	4
19	0	0	1	6	1	8	6	65	0	0	2	10	9	4	2
20	0	0	2	3	2	5	0	66	0	0	2	10	9	7	0
21	0	0	2	3	2	7	3	67	0	0	2	10	9	9	10
22	0	0	2	3	2	9	6	68	0	0	2	10	9	12	8
23	0	0	2	3	2	11	9	69	0	0	2	10	9	15	6
24	0	0	2	3	2	14	0	70	0	0	2	10	9	18	4
25	0	0	2	3	2	16	3	71	0	0	2	10	10	1	2
26	0	0	2	3	2	18	6	72	0	0	2	10	10	4	0
27	0	0	2	3	3	0	9	73	0	0	2	10	10	6	10
28	0	0	2	3	3	3	0	74	0	0	2	10	10	9	8
29	0	0	2	3	3	5	3	75	0	0	2	10	10	12	6
30	0	0	2	3	3	7	6	76	0	0	2	10	10	15	4
31	0	0	2	3	3	9	9	77	0	0	2	10	10	18	2
32	0	0	2	3	3	12	0	78	0	0	2	10	11	1	0
33	0	0	2	3	3	14	3	79	0	0	2	10	11	3	10
34	0	0	2	3	3	16	6	80	0	0	2	10	11	6	8
35	0	0	2	3	3	18	9	81	0	0	2	10	11	9	6
36	0	0	2	3	4	1	0	82	0	0	2	10	11	12	4
37	0	0	2	3	4	3	3	83	0	0	2	10	11	15	2
38	0	0	2	3	4	5	6	84	0	0	2	10	11	18	0
39	0	0	2	3	4	7	6	85	0	0	2	10	12	0	10
40	0	0	2	10	5	13	4	86	0	0	2	10	12	3	8
41	0	0	2	10	5	16	2	87	0	0	2	10	12	6	6
42	0	0	2	10	5	19	0	88	0	0	2	10	12	9	4
43	0	0	2	10	6	1	10	89	0	0	2	10	12	12	2
44	0	0	2	10	6	4	8	90	0	0	2	10	12	15	0
45	0	0	2	10	6	7	6	91	0	0	2	10	12	17	10
46	0	0	2	10	6	10	4	92	0	0	2	10	13	0	8
47	0	0	2	10	6	13	2	93	0	0	2	10	13	3	6
48	0	0	2	10	6	16	0	94	0	0	2	10	13	6	4
49	0	0	2	10	6	18	10	95	0	0	2	10	13	9	2
50	0	0	2	10	7	1	8	96	0	0	2	10	13	12	0
51	0	0	2	10	7	4	6	97	0	0	2	10	13	14	10
52	0	0	2	10	7	7	4	98	0	0	2	10	13	17	8
53	0	0	2	10	7	10	2	99	0	0	2	10	14	0	6
54	0	0	2	10	7	13	0	100	0	0	2	10	14	3	4
55	0	0	2	10	7	15	10								

And so on at the rate of 2s. 10d. in the pound for a rent of any amount.

Rules for charging the Inhabited House Duties.

First.—The said duties to be charged annually, on the occupier or occupiers for the time being of every such dwelling-house, at the respective rates before mentioned, and to be levied on him, her, or them, or on his, her, or their respective executors and administrators, and in like manner, in case of a change in the occupation thereof, as is before directed in respect of the duties of windows or lights. How charge-
able.

Second.—Every coach-house, stable, brew-house, wash-house, laundry, wood-house, bake-house, dairy, and all other offices, and all yards, courts, and cartilages, and gardens and pleasure-grounds, belonging to, and occupied with any dwelling-house, shall, in charging the said duties, be valued together with such dwelling-house; provided no more than one acre of such gardens and pleasure-grounds shall in any case be so valued. Outhouses.

Third.—All shops and warehouses which are attached to the dwelling-house, or have any communication therewith, shall, in charging the said duties, be valued together with the dwelling-house and the household and other offices aforesaid thereunto belonging (except such warehouses and buildings upon or near adjoining to wharfs which are occupied by persons who carry on the business of wharfingers, who have dwelling-houses upon the said wharfs for the residence of themselves or servants employed upon the said wharfs). Shops and
warehouses
attached.

And also, except such warehouses as are distinct and separate buildings, and not parts or parcels of such dwelling-houses, or the shops attached thereto, but employed solely for the purpose of lodging goods, wares, and merchandise, or for carrying on some manufacture (notwithstanding the same may adjoin to or have communication with the dwelling-house or shop). Warehouses
detached.

Fourth.—Every chamber or apartment in any of the inns of court, or of chancery, or in any college or hall in any of the universities of Great Britain, being severally in the tenure or occupation of any person or. Chambers in
inns of court,
&c.

persons, shall be charged thereto as an entire house, and on the respective occupiers thereof.

Public halls,
&c.

Fifth.—Every hall or office whatever belonging to any person or persons, or to any body or bodies politic or corporate, or to any company, that are or may be lawfully charged with the payment of any other taxes or parish rates, shall be subject to the duties hereby made payable as inhabited houses; and the person or persons, bodies politic or corporate, or company, to whom the same shall belong, shall be charged as the occupier or occupiers thereof.

Houses let in
apartments,
(See XIV).

Sixth.—Where any house shall be let in different stories, tenements, lodgings, or landings, and shall be inhabited by two or more persons or families, the same shall nevertheless be subject to, and shall in like manner be charged to, the said duties, as if such house or tenement was inhabited by one person or family, and the landlord or owner shall be deemed the occupier of such dwelling-house, and shall be charged with the said duties; provided that where the landlord shall not reside within the limits of the collector, or the same shall remain unpaid by such landlord for the space of twenty days after the same is due, the duties so charged may be levied on the occupier or occupiers respectively; and such payments shall be deducted and allowed out of the next payment on account of rent.

Value accord-
ing to poor-
rates.

Seventh.—No dwelling-house or other such premises as aforesaid, shall be estimated or rated at any less annual value than the rent or value at which the same premises stand charged in the last rate made on or before the time of making the assessment for the relief of the poor in the same parish or place.

If poor-rate
on full value.

Eighth.—In case the said poor-rate shall have been made throughout by a pound-rate on the full annual value of the dwelling-houses in the same parish or place, then such assessment shall be made according to the said rate; and the assessors appointed or to be appointed for the said duties shall, in making their assessments of the different dwelling-houses in the same parish or place, in all such cases as aforesaid, observe the same rule of propor-

tion between the assessment of the duties granted by this Act thereon, as shall have been observed in making such poor-rate as to all premises aforesaid rated in such poor-rate.

Ninth.—In case the said poor-rate shall have been made on any proportionate part of such value, then such assessors shall assess the same at the same sums respectively as they would have been assessed at by virtue of this Act, if the same had been respectively estimated in such poor-rate at the full value thereof respectively.

Tenth.—In case the poor-rate in any parish or If otherwise. place shall not be made on the full annual value of the different dwelling-houses charged, nor according to any proportionate part of such annual value, but, nevertheless, the said dwelling-houses shall be rated in due proportion to each other, it shall be lawful for the assessors, by all lawful ways and means authorised by this Act, to inquire into, and to the best of their information and judgment to ascertain, the actual rent of the several houses and other premises aforesaid, in different occupations within their limits, which shall have been let within the period of three years preceding the time for making the assessment, or so many of them as they shall be able to ascertain the rent of, and shall make an assessment on the actual rent on such of the said houses and premises therewith occupied, which shall appear to them to have been so let at the just and full value thereof, and shall afterwards proceed to assess the several other houses with the premises aforesaid occupied therewith in sums respectively bearing the same proportion, as far as the same can be computed, to the amount of such first assessment as the sums charged in the said poor-rate on such other premises respectively bear to the sum charged in the said poor-rate on the said house and premises so first assessed; provided always, that the aforesaid rule shall extend only to such houses and premises chargeable in this Act as shall be rated in such poor-rate, distinctly and unmixed with other property not chargeable to the duties hereby granted.

If not rated. Eleventh.—In case any house, with the premises aforesaid therewith occupied, shall not be rated in such poor-rate, or shall be rated therein together with other property not chargeable to the duties hereby granted, or there shall be no poor-rate in the parish or place where such house is situated, and in every case where the rules before mentioned are not applicable, the said assessors shall make their assessment from the best information they can obtain of the annual value thereof, which in all cases shall be the actual amount of the rent at which the said houses and premises aforesaid respectively are let, or if not let, the rent which they respectively are worth to be let by the year.

Abatement of rate. Twelfth.—In case any house, with the premises aforesaid, shall, on occasion of the assessor or assessors having pursued the proportions observed in the poor-rate on which such assessment shall be made, have been assessed at a sum exceeding the just rate on the annual value thereof, it shall be lawful for the commissioners to abate and deduct from such assessment so much as in their judgment will reduce the same to a just rate on such annual value, but in no case to a less annual value than the same stands rated at in the poor-rate.

Increase of rate. Thirteenth.—In case any house, with the premises aforesaid, shall on occasion of the assessor or assessors having pursued the proportions observed in such poor-rate, have been assessed at a sum less than the actual rent at which the same shall be let, or if not let, at less than the rent at which the same might be let, it shall be lawful for the commissioners to enlarge and increase such assessment to such sum as a like rent would amount unto.

Distinct tenements (See VI). Fourteenth.—Where any dwelling-house shall be divided into different tenements, being distinct properties, every such tenement shall be subject to the same duties as if the same was an entire house, which duty shall be paid by the occupiers thereof respectively. (48 Geo. 3. c. 55.)

Exemptions.

I. Any house belonging to his majesty, or any of Royal family.
the royal family, and every public office for which Public offices.
the duties heretofore payable have been paid by his
majesty, or out of the public revenue.

II. Every dwelling-house, being a farm-house oc- Farm-houses.
cupied by a tenant, and *bond fide* used for the pur-
poses of husbandry only.

III. Every dwelling-house, being a farm-house, Farm-house
occupied by the owner thereof, and *bond fide* used of owner.
for the purposes of husbandry only, which, together
with the household and other offices aforesaid, shall
be valued under this Act at 10*l.* per annum, or any
less sum.

IV. Any hospital, charity school, or house pro- Hospitals, &c.
vided for the reception of poor persons.

V. Every house whereof the keeping is or shall Houses in
be committed or left to the care or charge of any charge of
person or servant, who doth not pay rates to the servants, &c.
church and poor, and who resides therein only for
the purpose of taking care thereof; provided that an
assessment shall be duly made in every such case,
and the fact be truly returned in the manner directed
by this Act in other cases of exemption from the said
duties, and the exemption be allowed by the com-
missioners for executing this Act. (48 Geo. 3.
c. 55.)

The 5 Geo. 4. c. 44. s. 4. reciting that, by the Exemption
57 Geo. 3. c. 25. provision is made for granting ex- by 57 Geo. 3.
emptions to persons in trade from the duties on c. 25. to per-
houses, windows, and lights, and on inhabited sons in trade,
houses, in respect of houses, tenements, or build- from house
ings, or parts of tenements or buildings, used solely and window
by such persons for the purposes of trade, such per- duties.
sons respectively residing in a separate and distinct
dwelling-house, or part of a dwelling house, charged
to the said duties, and that it is expedient to extend
the said exemptions; enacts, that upon all assess-
ments to be made for any year commencing from and
after the 5th day of April, 1824, the provisions in

Extended to persons using houses under like circumstances as offices or counting-houses in their professions or other callings.

Exemption not to be extended to chambers in inns of court, or colleges in universities.

But such tenements may be

the said Act contained, for granting exemptions from the said duties to persons in trade, in respect of houses, tenements, or buildings, in the said Act described, shall and may be extended and applied by the respective commissioners and officers acting in the execution of the said Act and this Act, on due proof, to all and every person, or any number of persons in partnership together, for and in respect of any house, tenement, or building, or part of any tenement or building, in the said Act described, which shall be used by such person or persons as offices or counting-houses, for the purposes of exercising or carrying on any profession, vocation, business, or calling, by which such person or persons shall seek a livelihood or profit, no person inhabiting, dwelling, or abiding therein, except in the day time only, for the purpose of such profession, vocation, business, or calling, such person or each such person in partnership, respectively residing in a distinct and separate dwelling-house, or part of a dwelling-house charged to the said duties: provided, nevertheless, that the exemption herein authorized shall not extend to any chamber or apartment in any of the inns of court or of Chancery, or to any college or hall in either of the universities in Oxford or Cambridge, now chargeable with any of the said duties; and the said exemptions hereby authorized shall be claimed and allowed on due proof, and the assessments thereupon discharged by the same rules, and in same manner and form, as are allowed by the same Act to persons in trade; and all and every the provisions in the said Act contained shall be observed, followed, and practised, by the respective commissioners, inspectors, surveyors, and assessors, and other persons in the said Act described, in granting exemptions and discharging assessments under the provisions of this Act, to all intents as if such provisions formed part of the said Act passed in the fifty-seventh year aforesaid, any thing herein contained to the contrary notwithstanding.

The 57 Geo. 3. c. 25. s. 2. provides, that all such tenements or buildings, whether employed wholly

for the purposes of trade, or as warehouses for the sole purpose of lodging goods, wares, or merchandize therein, or as a shop or counting-house, may be brought into assessment as dwelling-houses in the manner directed by the said act; and every person intending to be relieved from the assessment made in respect of his or her tenement used for the purposes of trade, or as a warehouse for the sole purpose of lodging goods, wares, or merchandize therein, or as a shop or counting-house, by virtue of this Act, shall in such case give notice thereof to the assessor or surveyor of or for the parish or place where such last-mentioned tenement or building shall be situate, and at the same time deliver a declaration in writing, stating the parish or place where the dwelling-house or dwelling-houses, or part of a dwelling-house used as a residence by him, her, or them, or his, her, or their family or families, are respectively situate; and every assessor or surveyor to whom such notice and declaration shall be delivered, and every surveyor of the district acting for such parish or place, whether he shall have received such notice and declaration or not, who shall have information of such claim being made or to be made, shall, on request, from time to time, and at all times in the day-time, be admitted to inspect and survey the tenement or building described to be so employed, as well internally as externally, and shall inquire and examine into the uses and purposes to which the same is or has been employed; and if, after any such claim made, or before or after allowance thereof, it shall be discovered that the same tenement or building hath been employed for any other use than for the purposes of trade, or for a warehouse for lodging goods, wares, or merchandize, or for a shop or counting-house, or that any person doth inhabit or dwell therein, except as aforesaid, then on due proof thereof before the said commissioners, they shall and are hereby required to assess and charge the said tenement or building as a dwelling-house to the duties granted by the said Act, notwithstanding such claim, or any thing hereinbefore contained, shall be construed to impeach or

brought into assessment.

Persons claiming relief to give notice to assessor, &c.

Tenements to be inspected by assessor, &c.

If such tenement used for any other purpose, then commissioners to assess accordingly.

affect any exemption from the said duties expressly contained in the said recited Act¹.

Mills or places of manufacture, &c. not attached to a dwelling-house not liable to duty, though a servant licensed to guard the same abide therein.

Sect. 4. That the occupier of any mill, or place of manufacture, or warehouse, not being part or parcel of any dwelling-house, nor attached or adjoining to any dwelling-house, nor having any external communication therewith, may, by the license in writing of the commissioners of the district, signed by them, or any three or more of them assembled at any meeting, after due notice given by the occupier of such mill or place of manufacture, appoint any one of his or her servants named in such license to watch and guard the said mill, or place of manufacture, or warehouse, in the night time, and that the abiding of such licensed servants therein, for the purpose of guarding and watching the same, shall not render the occupier thereof liable to any of the duties granted by the said recited Act.

48 Geo. 3. c. 55. and 52 Geo. 3. c. 93. Amended by the 4 Geo. 4. c. 11.

DUTIES ON MALE SERVANTS.			DUTIES ON BACHELORS' MALE SERVANTS.		
No.	At per Serv.	Total per Year.	No.	At per Serv.	Total per Year.
1	1 4 0 ²	1 4 0	1	2 4 0	2 4 0
2	1 11 0	3 2 0	2	2 11 0	5 2 0
3	1 18 0	5 14 0	3	2 18 0	8 14 0
4	2 3 6	8 14 0	4	3 3 6	12 14 0
5	2 9 0	12 5 0	5	3 9 0	17 5 0
6	2 11 6	15 9 0	6	3 11 6	21 9 0
7	2 12 6	18 7 6	7	3 12 6	25 7 6
8	2 16 0	22 8 0	8	3 16 0	30 8 0
9	3 1 0	27 9 0	9	4 1 0	36 9 0
10	3 6 6	33 5 0	10	4 6 6	43 5 0
11	3 16 6	42 1 6	11	4 16 6	53 1 6
12	. . .	45 18 0	12	. . .	57 18 0
13	. . .	49 14 6	13	. . .	62 14 6
14	. . .	53 11 0	14	. . .	67 11 0
15	. . .	57 7 6	15	. . .	72 7 6

¹ See particularly the important provisions contained in the 3 and 4 Will. 4. c. 39. authorizing persons in trade, residing on part of the premises occupied by them, to claim exemption from one half of the Inhabited House Duty—*ante*, p. 46 and 47.

² This Rate of Duty (1l. 4s.) is payable for every male person employed in any of the capacities, Sch. C, No. 1., see *Rules*, &c. in next page, if the employer shall otherwise be chargeable to the above duties on servants, or for any carriage, or

ASSESSED TAXES.

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Waiters in Taverns, &c., 1*l.* 10*s.* each.

Coachmen, &c., let on job, 1*l.* 5*s.* each.

This duty is extended to coachmen kept for the purpose of driving any public stage coach or carriage, and to persons employed as guards to such stage coach or carriage.

By the 3 & 4 Will. 4. c. 39. passed 14th August, 1833, it is enacted by sect. 4. "That in respect of all assessments to be made for any year commencing from and after the 5th of April, 1833, the several rates and duties granted by the 48 Geo. 3. c. 55., 52 Geo. 3. c. 92., and the 2 & 3 Will. 4. c. 113., and now payable for male persons employed in the capacities of *riders or travellers*, and of *clerks, book-keepers, or office-keepers*, and of *stewards, bailiffs, overseers, or managers, clerks, under stewards, bailiffs, overseers, or managers*, and of *shopmen, warehousemen, porters, or cellar-men*, or of *grooms, stable-boys, or helpers in the stables*, solely and *bonâ-fide* employed in their respective trades or businesses, by any livery stable-keeper, horse dealer, post-master, or any other person licensed by the Commissioners of Stamps, or by any person under their authority, to let post-horses or carriages for hire or profit, shall severally cease and determine. Provided also, that where any *licensed victualler* in the said acts described shall employ one male person only, *bonâ-fide* and generally to *carry out and deliver any beer, &c. to customers*, such person shall be considered a porter hereby exempt from duty, although he may be occasionally employed to wait on guests."

Rules for charging the above Duties.

I. The said duties to be paid by the master or mistress of such servants respectively, and to extend to and be payable for every male servant retained or employed in any of the following capacities; that is to say, maître d'hôtel, house steward, master of the

To what servants extended.

for more than one horse kept for riding, or drawing any carriage; and if the employer shall not be chargeable to such other duties, then the sum of 10*s.* is payable for every such male person employed.

horse, groom of the chamber, valet de chambre, butler, under butler, clerk of the kitchen, confectioner, cook, house porter, footman, running footman, coachman, groom, postillion, stable boy, or helper in the stables of the master or mistress, gardener, park-keeper, game-keeper, huntsman, whipper-in, or by whatever name or names male servants really acting in any of the said capacities shall be called, or whether such male servants shall have been retained or employed in one or more of the said capacities, (except where other duties are imposed by this Act on male persons occasionally employed in one or more of the said capacities,) and to every such servant let on hire with any carriage or horses for one year, or any longer period, and shall be charged upon the greatest number of such servants which the same person shall have kept at one time in the course of the preceding year in any of the capacities before-mentioned.

Servants in
taverns.

II. The said duties shall extend to all servants in any of the capacities before-mentioned, employed in taverns, coffee-houses, inns, ale-houses, or any other house licensed to sell wine, ale, and other liquors by retail, and in eating or victualling-houses, and in hotels or lodging-houses, of whatever description, although not licensed, except hostlers and helpers in the stables of such licensed persons, and drivers employed by them to drive their carriages with horses let out on hire, and except waiters.

Gardeners.

III. The duties on gardeners shall extend to every gardener who shall have contracted for the keeping of any garden or gardens wherein the constant labour of a person shall be necessary, or where a person shall have been constantly employed therein, to be paid by the person or persons for whose use and in whose garden such gardener or person shall have been employed, except as hereinafter mentioned.

Apprentices.

IV. The said duties shall extend to all apprentices retained or employed in any of the capacities aforesaid, save and except such apprentices as shall have been imposed upon any master or mistress under and by virtue of the powers given to magis-

trates and parish officers by any Act or Acts of Parliament, so as the number of such apprentices for whom this exemption shall be claimed by the same person shall not exceed two; being generally employed in the affairs of husbandry or trade, and occasionally only in any of the capacities herein enumerated, and not wearing livery.

V. The said duties on gamekeepers shall extend to ^{Gamekeepers.} every person retained or employed to kill or preserve game for the use of any other person or persons, whether lawfully appointed to kill or preserve game or not, to be paid by the person or persons retaining or employing such persons respectively, for the uses aforesaid; except gamekeepers, being the servants of other qualified persons duly returned by and charged to the said duties as servants of such other persons.

VI. The said duties shall extend to every person ^{Coachmen, &c.} who shall be employed in the capacity of a coachman, postillion, groom, or helper in the stables, although such person shall have been retained for the purposes of husbandry, or any manufacture or trade, where the master or mistress of such person shall be chargeable with the duty for any carriage (other than a taxed cart), or for two or more horses chargeable with the duty on horses kept for the purpose of riding or drawing carriages as herein mentioned.

Exemptions.

I. Any male servant, or male person, who shall be the ^{Sons of the employer} son of his employer, and under the age of 21. ^{under 21.}
1 Will. 4. c. 35. s. 3.

II. Any apprentice bound for the term of seven years, during the term of his apprenticeship and service with his original master, or his assignee of the whole unexpired term, where no premium or other consideration or value shall have been taken or contracted for with such apprentice. ^{Apprentices without premium exempt.}

III. The said duties are not to be payable by any person who shall have retained or employed ^{Servants in husbandry.} *bond-fide* any male servant solely for the purpose of husbandry or manufacture.

College, &c.
servants.

IV. Nor by any college or hall within either of the universities of Oxford or Cambridge, or the several colleges of Westminster, Eton, or Winchester, for any butler, manciple, cook, gardener, or porter; nor by any of the royal family, for any servant acting in the capacities aforesaid.

Royal family's
servants.

Hospital
servants.

V. Nor by any of the royal hospitals of Christ, St. Bartholomew, Bridewell, Bethlehem, St. Thomas, in the city of London, and borough of Southwark, or Guy's, or the Foundling Hospital.

Officers'
servants.

VI. Nor by any officer herein after described, such officer retaining or employing as a servant one male person only; that is to say, by any officer serving in any regiment of horse or dragoons under the rank, or not receiving the pay, of a field-officer for one servant, being actually a soldier in the regiment, troop, or squadron, to which such officer shall belong.

Nor by any officer serving in any regiment of artillery, infantry, royal marines, royal garrison battalions, or corps of engineers, for one servant, being actually a soldier in the regiment or company to which such officer shall belong.

Nor by any officer in his majesty's navy, under the rank of a master and commander, in actual employ, for one servant borne upon the books of the ship to which such officer shall belong.

Nor by any officer on half-pay from his majesty's navy, army, or marines, who shall have been disabled by loss of a limb or wound received in his majesty's service, for one male servant retained by him.

Servants to
supply those
under mili-
tary training.

VII. Nor for any persons retained or employed in the above capacities, in the room of others who may be called out under any Act which has been passed, or which shall be passed, for training and exercising a military force within these kingdoms, during the time of such training and exercising.

DUTIES ON CARRIAGES WITH FOUR WHEELS OR MORE.			
No.	Per Carriage, 4 Wheels, for private use.	No.	4 Wheeled Stage Coaches and Post Chaises.
1	£6 0 0	1	£5 5 0
2	6 10 0	2	10 10 0
3	7 0 0	3	15 15 0
4	7 10 0	4	21 0 0
5	7 17 6	5	26 5 0
6	8 4 0	6	31 10 0
7	8 10 0	7	36 15 0
8	8 16 0	8	42 0 0
9	9 1 6	9	47 5 0

For every additional body, 3*l.* 3*s.*

Carriages let by coachmakers, without horses, 6*l.*

By 3 William 4. c. 35. for every carriage with four wheels, each being of less diameter than 30 inches, where the same shall be drawn by a pony or ponies, mule or mules, exceeding 12 hands, and not exceeding 13 hands in height, per annum 3*l.* 5*s.*; and for every carriage with four wheels, drawn by one horse, mare, gelding, or mule, and no more, per annum 4*l.* 10*s.*

By 4 Geo. 4. c. 11. the duty on *taxed carts* is wholly repealed.

DUTIES ON CARRIAGES WITH TWO WHEELS.

Carriages with two wheels, each . . . £3 5 0

Do. drawn by two or more horses or mules 4 10 0

For every additional Body used on the same carriage . . . 1 11 6

The above duty of 3*l.* 5*s.* was reduced to 1*l.* 10*s.* by the 2 and 3 Will. 4. c. 82; but *now*, by the 3 and 4 Will. 4. c. 39. s. 5. it is enacted that "Whereas by the 2 and 3 Will. 4. c. 82. the duties of 3*l.* 5*s.*

payable on certain *carriages with less than four wheels*, were reduced to 1*l.* 10*s.* for every carriage in the said Act described : And whereas it is expedient to repeal the said Act, and to exempt all such carriages hereinafter described from the payment of any duty ; be it enacted, that in respect of all assessments made for any year commencing after the 5th of April, 1833, the said Act shall be repealed, and the said duties cease and determine ; and every carriage with less than four wheels, heretofore chargeable with either of the said duties of 3*l.* 5*s.* or 1*l.* 10*s.* respectively, built, constructed, and used within the regulations hereinafter described, shall not be chargeable with *any duty* ; and any exemptions now in force for any horse, mare, gelding, or mule, *bonâ fide* kept for the purposes of husbandry, drawing any carriage in the said Act described as a taxed cart or common stage cart, shall be extended to carriages exempt from duty by this Act ; namely.

1. Every carriage with less than four wheels, kept by any person or persons for his or her own use, and not for hire or profit, and drawn by one horse, mare, gelding, or mule only, and not otherwise, and built and constructed with any materials (except as herein mentioned) and in any form, but without any head or covering, or any lining, fixed or not fixed, and without any spring or springs of iron, steel, or other metallic substance, or of any composition of iron, steel, or other metallic substance, either wholly or in part (other than iron tips, caps, or swivels, each not exceeding nine inches in length, and at the extremity only of each spring of such carriage), and the original price of which carriage, together with the cushion or cushions, and any other article or thing used with or belonging to such carriage, shall not have exceeded, or the value whereof shall not at any time exceed, the sum of twenty-one pounds sterling ; provided that every such carriage shall have the christian and surname or names, and places of abode, occupation, or calling of the owner or owners marked or painted in one or more straight line or lines on a black ground in white letters, or on a

white ground in black letters, on the back pannel or back part of such carriage, or if there shall be no such back pannel or back part, then upon the right or off side of the side pannel, and if no such side pannel, then upon the right or off side shaft of such carriage, in Roman characters and in words at length, each of such letters being at least one inch in height, and of a proper and proportionate breadth :

2. Every carriage with less than four wheels, *bond fide* built and constructed wholly of wood and iron, with any spring or springs (wholly or in part of metal), and without any covering other than a tilted covering, and without any lining, apron, or cushion, and with the seat fixed or suspended by slings or braces, such carriage not being on any occasion let or used by the owner or owners, or any other person or persons, for hire or profit, but kept as a common stage cart, and used truly and without fraud in the affairs of husbandry, or in the carriage of goods, or in the course of trade, although used occasionally for the purpose of riding therein ; provided that every such common stage cart shall have the christian and surname or names, and residence, occupation, or calling of the owner or owners, and also the words "common stage cart," painted thereon, in the same manner as is hereinbefore prescribed with respect to the carriage and exemption number One.

DUTIES ON HORSES.					
<i>Horses for Riding or Drawing Carriages.</i>					
No.	At per Horse.	Total Yearly.	No.	At per Horse.	Total Yearly.
1	1 8 9	1 8 9	11	3 3 6	34 18 6
2	2 7 3	4 14 6	12	3 3 6	38 2 0
3	2 12 3	7 16 9	13	3 3 9	41 8 9
4	2 15 0	11 0 0	14	3 3 9	44 12 6
5	2 15 9	13 8 9	15	3 3 9	47 16 3
6	2 18 0	17 8 0	16	3 3 9	51 0 0
7	2 19 9	20 18 3	17	3 4 0	54 8 0
8	2 19 9	23 18 0	18	3 4 6	58 1 0
9	3 0 9	27 6 9	19	3 5 0	61 15 0
10	3 3 6	31 15 0	20	3 6 0	66 0 0

ASSESSED TAXES.

Horses let to hire without Post Duty, and	£	s.	d.
Race Horses, each	1	8	9
Horses rode by Butchers in their trade, each	1	8	9
Where two only are kept, the second at	0	10	6
Horses not exceeding the height of 13 hands, each	1	1	0
One horse used by a Bailiff on a Farm	1	5	0
Other horses 13 hands high, and Mules, each	0	10	6

A husbandry horse, occasionally ridden by any one occupying a farm of less annual value than 100*l.* is exempt.

In respect of all assessments for any year commencing from and after the 5th of April, 1833, every horse, mare, gelding, or mule, *bond fide* kept and used by *market-gardeners* in the cultivation of the gardens and lands in their occupations, and in conveying the produce thereof to and from market (whether solely used for such purposes, or partly therein, and partly in the affairs of husbandry by the same persons), shall be deemed husbandry horses, and be exempt. 3 and 4 Will. 4. c. 39. s. 6.

DUTIES ON DOGS.

For every Greyhound	1	0	0
For every Hound, Pointer, Setting Dog, Spaniel, Terrier, or Lurcher; and for every Dog, where two or more are kept, of whatever denomination they may be (except Greyhounds)	0	14	0
For every other Dog, where one only is kept	0	8	0
Persons compounding for their hounds are to be charged	36	0	0

"From and after the 5th of April, 1833, every person employed as a shepherd, and making a livelihood solely thereby, shall be exempt from the duty now payable in respect of dogs next hereinafter described; (*videlicet*), for any dog or dogs not being a greyhound, hound, pointer, setting dog, spaniel,

ASSESSED TAXES.

65

lurcher, or terrier, which shall be *bond fide* kept and employed by such shepherd solely in the care of a flock or flocks of sheep which such shepherd shall tend, and in which he shall have a direct interest, and not otherwise ; provided that returns be made and exemption claimed for such dogs, as in other cases under the provisions of the Acts in force." 3 and 4 Will. 4. c. 39. s. 7.

HORSE-DEALERS' DUTY.

Every person exercising the business of a

Horse-dealer	12	10	0
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HAIR-POWDER DUTY.

Persons wearing or using Hair-powder	1	3	6
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ARMORIAL BEARINGS DUTY.

Persons using Armorial Bearings, and keeping a coach, or other taxable carriage	2	8	0
Persons not keeping such carriage, but charged to the House or Window duty	1	4	0
Persons not keeping such carriage, nor being chargeable to the House or Window duty	0	12	0

GAME DUTY.

Upon every person who shall use any Dog, Gun, Net, or other Engine for the purpose of taking or killing any game whatever, or shall take or kill, or assist in so doing, by any means whatever, any Game, by virtue of any deputation or appointment duly registered or entered, as Gamekeeper, for any lands in Scotland—

If such person shall be a servant to any person duly charged, in respect of such Servant, to the duties granted on Servants by this Act, there shall be charged for such person acting by such deputation or appointment, the annual sum of . . . 1*l.* 5*s.* 0*d.*

And if such person shall not be a Servant, for whom the said duties on servants shall be charged, the annual sum of 3*l*. 13*s*. 6*d*.

Upon every other person using any Dog, &c. or taking or killing any Game, &c. as above, there shall be charged 3*l*. 13*s*. 6*d*.

By 1 and 2 Will. 4. c. 32. persons licensed to deal in game are to take out a certificate, charged with a duty of 2*l*. ; but certificated persons may sell game to licensed dealers, if paying a duty of 3*l*. 13*s*. 6*d*.

ASSISTANT OVERSEER.—See OVERSEER ASSISTANT.

Baptism.

Fees. The fees claimed for baptizing are, according to Chief Justice Holt, payable by *custom* only.

Sponsors. The Rubric requires that there shall be for every male child to be baptized, two godfathers and one godmother ; and for every female, one godfather and two godmothers. (*Can.* 29.)

Private baptism. Baptism may be performed in private houses, with the minister's consent, as well as in the church. And it is ordained by the 69th Canon, that "if the acting minister, being duly informed of the weakness and danger of death of any infant unbaptized in the parish, and being desired to go to its residence to baptize it, shall either refuse, or by gross negligence so defer the time that it dieth unbaptized through his default, the said minister shall be suspended for three months, and before his restitution shall acknowledge his fault, and promise before his ordinary that he *will* not wittingly incur the like again."

Bastard Children.

Bastards. The law has armed magistrates, &c. with very ample powers, to compel the parents of illegitimate children to maintain them, in exoneration of the parish, where either parent has the means so to do.

The 18 Eliz. c. 3. extended by 7 Jam. 1. and 50 Geo. 3. c. 51. enacts, that two or more justices, within

their several limits, &c. where any such child shall be born, may examine into the matter, and make order for the *punishment*¹ of the mother and reputed father, as also for the *relief of the parish* from the charge thereof, wholly or in part, *by charging such father or mother with the payment of money weekly, or other sustentation*, (i. e. means of sustenance,) as they may think meet.

Justices may order reputed father, or mother, to make weekly payments, &c. for maintenance of bastards.

And such mother or reputed father may be committed for non-compliance with such order, unless he or she give security, either to perform it, or to appear at the next general sessions.

Or commit for non-compliance, unless security be given, &c.

By the 49 Geo. 3. c. 68. all reasonable charges incident to the birth of a bastard child, with the expenses of apprehending the reputed father, and the costs of the order of filiation, *not exceeding 10l.*, shall be borne by such *reputed father*.

49 Geo. 3. c. 68. Expenses to be paid by reputed father.

By 13 & 14 Car. 2. c. 12. s. 19. churchwardens, &c, under an order of justices, may seize the goods and chattels, or profits, &c. of lands, belonging to the putative father of a bastard child, absconding out of the parish or county, to provide for the bringing up of such child.

13 & 14 Car. 2. c. 12. Goods, &c. of reputed father may be seized.

By 6 Geo. 2. c. 31. s. 1. if any *single woman* shall be *delivered* of a bastard child, which shall be chargeable to any parish, &c., or *likely to become so*; or shall declare herself to be with child, and that it is likely to be born a bastard, and become chargeable as aforesaid; and shall, in either case, on oath, before one or more justices, charge any person with having gotten her with child; such justice may, on the application of an overseer of the parish, or of a substantial housekeeper of an extra-parochial place, issue his warrant to apprehend and bring the person

6 Geo. 2. c. 31. Father may be apprehended by justices' warrant, on oath, of woman delivered of bastard.

¹ The *punishment* of the reputed father of a bastard child is not defined; but by the second section of stat. 50 Geo. 3. c. 51. which repealed 7 Jac. 1. c. 4. it is enacted, that from and after the passing thereof, in cases where a woman shall have a bastard child which may be chargeable to the parish, any two justices of the peace before whom any such woman shall be brought, may commit such woman to the house of correction, there to be set to work for *not exceeding twelve calendar months, nor less than six weeks*.

And committed if he do not give security, or enter into recognizance, &c.

Justices, on prisoner's application, may summon overseers, &c.

If no order made within six weeks after delivery, prisoner may be discharged.

Woman not to be sent for and examined before delivery, or until one month after.

One justice cannot compel a woman to be examined under this act.

49 Geo. 3. c. 68. Persons charged on oath of a single woman with having gotten her with child, may be immediately apprehended;

so charged before any justice of the county, who may commit the accused to the common gaol, &c., unless he *give security to indemnify the parish, &c.* or enter into a *recognizance*, with sufficient surety, to appear at the next general quarter sessions¹.

Sect. 3. That upon application made by any person so committed, or by any person on his behalf, to any justice residing near the limits of the parish, such justice may summon the overseer of such parish, or one or more of the substantial housekeepers of such extra-parochial place, to appear and show cause why such person should not be discharged; and if no order shall have been made in pursuance of 18 Eliz. within six weeks after such woman shall have been delivered², such justice may discharge him from imprisonment.

Sect. 4. That it shall *not* be lawful for any justice or justices to send for any woman *before she shall be delivered*, and one month after, in order to her being examined concerning her pregnancy, or to *compel* any woman, *before she shall be delivered*, to *answer to any question relating to her pregnancy*.

One justice, it should seem from a recent decision, has not power to compel a woman to be examined under this Act, although he *may hear the charge*, (if the woman *come before him* and make one) and cause the accused to be apprehended; but he cannot *compel her to answer interrogatories*, and so to *make such charge*. 6 Barn. and Cres. 80.

By the 49 Geo. 3. c. 68. s. 2. it is enacted that if any single woman shall declare herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to any parish, &c., and shall in an examination, to be taken in writing, upon oath, before any justice of the county, &c., charge any person with having gotten her with child, such justice may, on application made to him by the overseer of any parish, or by any substantial housekeeper of an extra-parochial place, issue his warrant

¹ But see further, s. 6. of 49 Geo. 3. c. 68. by which part of this enactment is repealed.

² But see 49 Geo. 3. c. 8. s. 66.

for the immediate apprehension of the person so charged, and for bringing him before himself or any other justice of the county, who may commit such person to the common gaol or house of correction for such county, &c., unless he shall give security to indemnify such parish or place, or shall enter into a recognizance, with sufficient surety, to appear at the next general quarter sessions, to abide the order then made in pursuance of 18 Eliz. unless one such justice shall have certified in writing to such quarter sessions that it had been proved before him, on oath of one credible witness, that such single woman had not been then delivered, or had been delivered within one month only previous to the day on which such quarter sessions shall be holden, or unless two such justices of the county, &c. shall have certified in writing to the next (or where such woman shall not have been delivered as aforesaid, then to the immediately subsequent) general quarter sessions, that an order of filiation had been already made on the person so charged, or that such order was not then requisite to be made, on account of the death of the child, or other sufficient reason; in the former of which cases, the justices at sessions may respite the recognizance for another sessions, and in the latter, discharge it altogether.

And committed, unless he give security, or enter into a recognizance.

And must abide decision of sessions, unless justices certify, &c.

The 3d section of the same statute enacts, that if any such father or mother, on whom any order of filiation or maintenance has been made, unappealed against, shall neglect to pay the sum ordered for such maintenance, any justice of the peace where such father or mother may happen to be, may, and is required, on complaint by any overseer of the parish liable to the maintenance of such bastard, or of the parish where such bastard shall then be, upon proof on oath of such order, and of the money being unpaid, and of a demand and refusal of payment, or that such mother or reputed father hath left his or her usual place of abode, and avoided such demand being made, to issue his warrant to apprehend, and bring before himself, or any other justice of the county, &c., such mother or reputed father, to answer

Mother, or reputed father, may be apprehended and committed to prison for three months, for neglecting to pay maintenance money as ordered.

And so, from time to time, as often as any sum shall become due. such complaint; and if payment be not then made, or some reasonable objection be not shown, the said justice is required to commit such father or mother to the common gaol or house of correction, for three months, unless the money be sooner paid; and so, from time to time, *as often as any sum shall become due* by virtue of such order.

Charges, costs, &c. to be fixed by justices or sessions. And the 4th section provides, that all charges, expenses, and costs, shall be in the discretion of the justices or sessions who make the order of filiation, except that the costs of apprehending and securing the reputed father, and making such order of filiation, shall not exceed 10*l*.

Bastards of married women. The bastards of *married women* are deemed to come within the meaning of these Acts; (*Rex v. Luffe, 8 East, 204.*) whence it may be necessary to explain, that though what is generally understood by the term bastard is *one begotten and born out of lawful matrimony*, yet that children may in some cases be illegitimate though their mothers be married at the period of their birth. Thus, all children born so long after the death of the husband that, by the usual course of gestation in women, they could not have been begotten by him; all children of a marriage *proved void*, in consequence of a prior marriage, the non-observance of the solemnities of the Marriage Act, &c.; children born of a married woman, although it be proved that the husband had not, within a given time, had access to his wife—are, in all such cases, deemed bastards, and as such are considered within the provisions of the Acts which we have quoted.

The rule of law, however, is, that the issue of a woman married at the time the child was begotten, shall in all cases be presumed to be legitimate, until it be distinctly proved that the husband could not, from a natural impossibility, be the father, or had not, or could not have had access at a time when by the laws of nature he could be the father of the child. (*Case of the Banbury Peerage, 2 Selw. N. P. 745.*) But marriage, though so recent that the child could not have been *begotten*, though it was

born in wedlock, is deemed an admission by the husband that the child is his, and it is therefore legitimate. "Where," said Lord Ellenborough, "the parents have married so recently before the birth of the child that it could not have been begotten in wedlock, the marriage of the parties is the criterion, in such cases, of ante-nuptial generation, for ascertaining the actual parentage of the child. For this purpose it will not examine when the gestation began, looking only to the recognition of it by the husband in the subsequent act of marriage." (*Rex v. Luffe*, 8 East, 207, 8.)

But a child born during a divorce *a vinculo matrimonii* (i. e. from the bond of marriage), is of course a bastard. If born during a divorce *a mens et thoro* (from bed and board), it will be *presumed* to be a bastard, non-access being inferred, in obedience to the sentence imposed on the parties by the Ecclesiastical Court (1 Salk. 123. 1 Black. Comm. 457); but such *prima facie* evidence may be rebutted by the *proof of access*. (*Ibid.*) If the husband and wife are separated by voluntary deed merely, the issue of the wife will be deemed legitimate until *non-access* be proved. (*Ibid.*)

The complaint to the justices must be made by the overseers of the poor, or one of them (1 Bott. 473); or by the mother, with the concurrence of the parish officers. (*Chitty's "Burn's Justice."*)

By whom complaint, or charge, should be made.

A summons is generally issued against the putative father; unless it be apprehended that such summons will only serve as a notice to him to *abscond*. It does not appear to be *compulsory* that a summons should be issued; but if issued, and he do not attend, the order of justices may be made in his absence, as decided in *Rex v. Upton and Gray*, Cald. 308. 1 Bott. 482.

As to summoning the putative father.

If a warrant be issued for the apprehension of the putative father, it continues in force till fully executed, which may be at any time, however distant, while the magistrate who granted it continues in commission.

Force of warrant.

If the party charged appear before the justices, he

Defence of

the putative father.

may defend himself; but he cannot be defended by others in his absence, unless he be incapacitated, by illness or other just cause, from attending; in which case evidence may be heard in his defence—and if, after considering the evidence on both sides, the justices be satisfied that the person is justly charged with being the father, they should make order of filiation accordingly. (*Steer's Parish Law.*)

Order for payment should be limited.

But the payment, respecting which order is made, should be limited to so long a time as the child shall remain chargeable: an indefinite order to pay so much a week, is bad. (*Ibid.*)

Amounts, &c. should be specified therein.

The order must specify the sums to be paid, as well for maintenance, as for the expenses attending the birth, &c. (4 *Maul. & Sel.* 559.) But, to render the father liable to any such expenses, the child must be *born alive*. (14 *East*, 277.)

By whom action on indemnity should be brought.

In cases where the reputed father gives security to indemnify the parish against the expenses of maintaining the child, the remedy on his default (whether such security be by bond or otherwise) is by action at law, in the names of the overseers for the *time being*, though such indemnity may have been given to their predecessors. (3 *Moore*, 21. 6 *Taunt.* 691.)

Actual amount of damage only can be recovered.

No sum can be recovered beyond the amount of damages actually sustained by the parish. (*Doug.* 449.)

Father cannot legally compound for his entire liability; but may make deposit as security.

A sum of money may, it seems, be paid to the parish officers as a *security* to indemnify the parish, but not as a *composition* for the entire liability of the putative parent. (*Watkins v. Howlett*, 1 *B. B.* 1. and *Shutt v. Proctor*, 2 *Marsh*, 224.) And in the case of a deposit so made by the father as a security, it has been decided that he may recover any surplus which may be remaining after the child shall have ceased to be chargeable. (1 *B. & B.* 1.)

Case where money paid by father was recovered.

In a case where the father of a bastard child, upon whom an order of filiation had been made, paid several sums on that account to the parish, and during the time for which he paid the child was in the Foundling Hospital, and the parish put to no

expense, it was held that he might recover the amount. (*Hodgson v. Williams*, 6 *Esp.* 29.)

It seems to be established, that, after an order of bastardy has been made, the father of the child may take it from the parish, and maintain it himself; or at least, if he offer to take and maintain, and the parish insist on supporting it, they cannot proceed against him on the indemnity. (*Newland v. Osman*, 1 *Bott.* 460. 2 *Saund.* 83.)

If father offer to take and maintain the child, parish cannot proceed on bond, &c.

As to the question whether the father or mother has the better claim or right to the custody of a bastard child, it seems to be decided that the mother is entitled to the custody of the child till it is *past the age of nurture*, at least; and from the adjudications which have as yet been made, it must still be pronounced doubtful whether the father, at any time, can *compel* her to resign it. A bastard being deemed in law *nullius filius* (the child of nobody), its mother may be said to be its only *certain* parent, and the power over it of the reputed father is altogether questionable.

As to preferable right of father or mother to the custody of an illegitimate child.

Thus, in the case of *Rex v. Soper*, a child of three years of age having been brought up at the instance of its mother, on a *habeas corpus*, by the putative father, on whom an order of filiation had been made, and who had obtained possession of the child by fraud, Lord Kenyon said, that "the putative father had no right to the custody of the child," which was accordingly returned to its mother. (5 *Term Rep.* 278.)

Case, *Rex v. Soper.*

And in another case, an application was made for a *habeas corpus*, to bring up an infant illegitimate child in order to restore it to the mother. It appeared that the child had originally been placed, by consent of both father and mother, under the care of a nurse; that it was afterwards removed by the father to another woman; and that the father then went abroad, having first charged a friend with the superintendence of the child. The mother now *insisted* on having the child delivered up to herself. Lord Mansfield, in pronouncing judgment, said, "there is no affidavit before the Court to show any ground of appre-

Case, *Ex-parte Kne.*

hension that the child would incur any danger from being left with the mother. It is not unlikely, indeed, that by granting this application, we may be doing a great prejudice to the child ; but still *the mother is entitled to the child if she insists on it.* The mother may be disposed to take care of the child, but it is not probable that it will be so advantageously brought up under her care as under the care of some person whom the father approves of. It often happens that the mother insists upon the custody of the child, not so much out of regard to it, as with a view to make the father pay a sum of money towards its maintenance and education. Nevertheless, the mother must have the child, *unless some ground be laid by affidavit to prevent it.* Let the child be delivered to the mother." (*Ex parte Ann Knee*, 1 N. R. 158.)

Remarks.

The decision in such cases, however, must be materially regulated by *circumstances*, which, it is presumed, if deemed of sufficient weight, (as that the father had for any considerable period wholly provided for the child, without any aid from the mother, or attention on her part—that her character was such that the child could not be entrusted to her care without detriment, &c. &c.) would justify any court, or magistrates, in refusing the mother's application to have her natural child delivered up to her.

Beadle of the Parish.

Beadle, or Bedel, of the Latin *bedellus*, Sax. *bydel*, is a crier, or messenger, of a court, whose duty it is to cite men to appear and answer. There are also university beadles, and church beadles, now called summoners and apparitors ; but the beadle of whom we have to speak, is the important personage well known to every child as the *beadle of the parish*. This officer is appointed by the vestry, and his business is to give notice to the parishioners when and where a vestry is appointed to be holden, to attend it when it meets, and to execute its orders ;

to act in a subordinate capacity in assisting the churchwardens, overseers, and constables, in their respective duties, when commanded so to do; and generally to execute the orders of the vestry and the parish.

BELL RINGING.—See CHURCHWARDENS.

Brawling, Striking, &c. in Churches.

By stat. 5 & 6 Edw. 6. c. 4. s. 1. if any person shall quarrel, chide, or brawl, by words only, in any church or church-yard, he is punishable by the ordinary, upon the evidence of two witnesses, by suspension of the offender, if a layman, *ab ingressu ecclesiæ*, (from the right of entering the church,) and if a clerk, (i. e. a clergyman) from ministration of his office, for so long as the ordinary shall think fit.

5 & 6 Edw. 6. c. 4.
Brawling in churches, how punishable.

Proceedings under this Act must be supported by two witnesses on the specific charge. (1 *Haggard's Rep.* 181.)

Charge must be supported by two witnesses.

The court will consider time and place in these cases, for the same conduct may not be deemed equally offensive in the *vestry* as in the *church*. (*Ibid.* 184.) If such misconduct occur in a place not consecrated, though it be silent, and directed against the minister while presiding at a meeting of his parishioners, it is not an offence within the stat. of Edw. 6. the places referred to in which are "church or church-yard" only; but it may still be an ecclesiastical offence, and punishable; especially if it be in a vestry-room *partly within the church-yard*. (*Williams v. Goodyer*, 2 *Add. Rep.* 463.) The Act of Edw. 6. was not intended to abridge the ecclesiastical jurisdiction. (*Jackson v. Barrett*, 1 *Hagg.* 15.)

Time and place will be considered, &c.

Provocation is no defence to a suit for brawling in a church at a vestry meeting, (*Jackson v. Barrett*, 1 *Hagg.* 15); but the suit for brawling or striking must be brought within eight calendar months after the offence is committed. (27 Geo. 3. c. 44.)

Provocation no defence.

Suit must be instituted within eight months after offence.

Striking in
church or
churchyard.

By the second section of the statute before cited (5 & 6 Edw. 6. c. 4.) if any person smite or lay violent hands on another in any church or churchyard, he shall be deemed *ipso facto* excommunicate, and be excluded from the fellowship and company of Christ's congregation.

It seems, however, that, notwithstanding the words of the Act, proper proof of the offence must be given in the Spiritual Court previous to excommunication. (1 *Hawk.* 139. and numerous other authorities.)

And a *threatening posture*, though an assault at common law even without a blow, is not deemed a *smiting* within the statute. (*Jenkins v. Barrett*, 1 *Hagg. Rep.* 15.)

Nor are churchwardens (or perhaps private persons) who whip boys for playing in the church, or pull off the hats of those who refuse to take them off themselves, or gently lay hands on those who disturb any part of divine service, and turn them out of the church, deemed within the meaning of the statute. (1 *Hawk.* 139. and others.)

Disturbing
minister or
congregation.

By the 1 Mary, st. 2. c. 3. and 1 Will. & Mary, c. 18. s. 18. it is provided, that any person who shall wilfully and maliciously *disturb any minister, or congregation, during divine service*, may be apprehended by the constable, churchwarden, or any other person present, and carried before a magistrate, who may punish the offender.

And upon conviction at the next quarter sessions, such offender shall suffer the penalty of 40*l.* 52 Geo. 3. c. 155. s. 12.

This protection is deemed to extend to *all* religious assemblies authorized by the several Acts in favour of non-conformists, &c. but in prosecutions for the offence, the wilful and malicious intention must be made apparent. (2 *Barn. & Cres.* 699 ; 4 *Donl. & Ryl.* 217.)

See further, CHURCH—CHURCH BURNING—SACRILEGE, &c.

Bridges.

In general, *counties* are bound to repair bridges ; but, in particular cases, a *parish*, township, corporation, or a private individual, may be liable to repair a bridge, either by prescription, or *ratione tenuræ* (by reason of the tenure of their lands, &c.)

Who bound to repair bridges.

By the 3 Geo. 4. c. 126. *parishes* liable to repair bridges may enter into a composition with the trustees of the roads, or persons acting on behalf of counties, to relieve themselves from such repairs in future.

Parishes may compound with counties.

From a case which has been decided, it appears, that the obligation to *repair*, does not carry with it the liability to *widen* the bridge, however much such widening may be requisite. (*Rex v. Devon*, 4. *Barn. & Cres.* 670.)

Persons liable to repair not bound to widen.

The principles of the common law relating to highways are in general applicable to bridges—see HIGHWAYS.

If a man make a bridge for the common good, he is not bound to repair it. (2 *Inst.* 701.)

Bridges erected by a man pro bono publico.

But if a person erect a bridge in a highway, of so slight and incommodious a structure as to be evidently likely to become a burden on the county, it may be indicted as a nuisance. (2 *East*, 348.)

The public benefit is the criterion ; if erected by an individual, and it be useless, or merely ornamental, neither he nor the public are bound to sustain it. If principally for his own benefit, and only collaterally for the benefit of others, the public have nothing to do with it ; but if of unquestionable public utility, the public, as they reap the benefit, are bound to repair. (5 *Burr.* 2594.)

Ibid.

Where an Act of Parliament appoints trustees for taking down an old bridge, and building a new one in its stead, the county is not liable to repair until the purposes of the Act are accomplished, and the powers it confers cease to operate. (16 *East*, 395.)

County exempt from repairs during operation of Act for building a new bridge.

The freehold of bridges is in him that hath the

Freehold and free passage.

freehold of the soil ; but the free passage is for all the king's liege people. (2 *Inst.* 705.)

Erection of new bridge, &c. can only be compelled by Act of Parliament.

Nothing can compel the erection of a bridge, where no bridge ever was before, except an Act of Parliament. (2 *Inst.* 701.)

Who bound to repair bridges within or without cities, &c.

The inhabitants of a *town* are not liable to repair a bridge out of the town. (3 *Term Rep.* 518.) If *without* any city or town corporate, the inhabitants of the shire or riding are bound to repair ; if *within* such city, &c. then the inhabitants of such city, &c. ; and if part of the bridge be in one shire, &c. and part in another, then the inhabitants of each shire shall repair such portion as shall lie within the limits of each. 22 *Hen.* 8. c. 5. s. 2 and 3.

Lands given for repair of bridges to be let for utmost value.

By the 13 Geo. 3. c. 78. s. 51. all lands given for the maintenance of bridges shall be let at the most improved yearly value ; and the justices of the peace in their open sessions, if they deem the trustees of such lands negligent or faulty in the performance of their trust, may inquire into the value of such lands so given, and order the improvement and employment of the rents and profits thereof, according to the will and directions of the donors (except lands so given to *universities* having visitors of their own).

Power of justices over such lands.

Toll-keepers on public bridges not to be allowed to sell liquors, &c.

And by the 62d section of the same statute it is enacted, that if *any person or persons collecting any tolls* payable for passing over any public bridge with carriages or cattle of any kind, shall *keep any victualing-house, alehouse, or other place of public entertainment*, or shall *sell, or permit to be sold therein, any wine, beer, ale, cyder, spirituous liquors, or other strong liquors, by retail*, such persons, being lawfully convicted thereof before any justice of the peace within the limits, shall for every such offence forfeit five pounds.

Penalty.

Bridges liable to assessment for parish rates at both ends. Case of the Hammersmith suspension bridge.

In the case of the Hammersmith suspension bridge, tried in the King's Bench in 1830, an important question was decided regarding the rating of the tolls of bridges to parishes. The bridge is at one end in the county of Middlesex, and at the other in the county of Surrey. It was erected by a company, and the profits are divisible among the shareholders.

The gate at which the tolls are received was proved to be on the Middlesex side, and the company paid to the poor rates on that side; but upon being assessed on the other side also, where no tolls were taken, they appealed. The court, having heard the case, were of opinion, that as the company were *beneficial occupiers on both sides* of the river, it was immaterial at what part of the bridge the tolls were taken, and that therefore they were *clearly liable to be assessed to the parish in the county of Surrey, as well as in the county of Middlesex.* *Rex v. Barnes*, Trin. Term, 1830.

By the 7 and 8 Geo. 4. c. 30. s. 13. if any person shall unlawfully and maliciously pull down, or in any wise destroy, any public bridge, or do any injury with intent, and so as thereby to render such bridge, or any part thereof, dangerous or impassable, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice, publicly or privately whipped, if the court think fit, in addition to such imprisonment.

Maliciously
destroying.
&c. bridges.

Transporta-
tion for life,
or 7 years, or
imprison-
ment, &c.

Burial.

Every parishioner hath, and always had, a right to be buried in the church-yard of his own parish. (*Gibs.* 453.)

Parishioner's
right to be
buried in the
churchyard of
his parish :

A parishioner has a common right to be so buried, without paying any thing for breaking the soil; and if there be an accustomed fee, and that be denied, still the clergyman is bound to bury the body of a parishioner in the church-yard, provided he be not required to do so in any *particular part* of the church-yard. (*Burn's Eccl. Law*, 258. 268.) If there be any dispute as to what is the accustomed fee, that is triable in the common law courts. (1 *Salk.* 334.)

But not in
any parti-
cular part :

A custom that any parishioner has a *right* to bury

Or near their
ancestors.

his dead relations in a church-yard *as near his ancestors as possible*, cannot be maintained. (*Fryer v. Johnson*, 2 *Wils.* 28.) The law gives no absolute right to that effect.

Or in another parish.

So also, a person cannot absolutely *claim* burial for his deceased friend or relation, in the church-yard of *another parish*. The permission of the parishioners, or the incumbent, must be obtained; but such consent, where a person dies at any considerable distance from his own parish, can rarely with any decency be refused.

Minister, by canon 68, bound to bury.

By canon 68 of ecclesiastical law, it is provided that no minister shall refuse or delay to bury any corpse that is brought to the church or church-yard, (convenient notice having been given him), in the manner and form prescribed in the book of Common Prayer. And if he refuse so to do (except the deceased were denounced, or excommunicated, for some grievous and notorious crime, and no man able to testify of his repentance¹), he shall be suspended by the bishop of the diocese for three months.

Penalty for refusal or delay.

Who excluded from Christian burial.

In the Rubric it is particularly stated, as a guidance to ministers officiating at burials, "Here it is to be noted, that the office ensuing is not to be used for any that die *unbaptized, excommunicate*, or who have *laid violent hands on themselves*."

Hence, the *unbaptized, excommunicate*, and *sui-cides*, are now the only classes of persons excluded from Christian burial.

"Laid violent hands on themselves," how construed.

Those only against whom a verdict of *felo-de-se*, or self-murder, has been returned by a coroner's inquest, are deemed to come within the terms—"laid violent hands on themselves;" and not *idiots, lunatics*, &c. who may have destroyed their own lives from the want of capacity to govern themselves.

Felones-de-se, how to be buried.

With respect to the corpses of those against whom a verdict of *felo-de-se* shall be returned, it is enacted by 4 Geo. 4. c. 52. that the coroner shall *not in fu-*

¹ On sufficient evidence being laid before the bishop of the repentance of the deceased, though excommunicated, it seems he would be entitled to Christian burial.

ture issue his warrant for the interment of the remains of such persons in any public highway, but shall give directions for their private interment, without any stake being driven through the body, in the church-yard, or other burial-ground of the parish or place to which such person belonged; such interment to be made within 24 hours after the verdict, between the hours of 9 and 12 at night; and by sect. 2. without Christian rites.

As to exclusion from funeral rights of the unbaptized, *practice* is not rigid; and with respect to the excommunicated, see note in preceding page.

Unbaptized and excommunicate.

In the Court of Arches, in 1809, baptism by a dissenting minister was adjudged to be a sufficient baptism to entitle a child to Christian burial by a minister of the Church of England. *Church* baptism, therefore, is not essential.

But though all the parishioners have a common right to be buried in the church-yard of their own parish, yet the common law has vested the privilege of granting permission to be buried in the *church* in the parson only (i. e. the rector or vicar). With this right, neither the churchwardens, nor even the ordinary himself, can interfere; because, when the burying in churches was first allowed, the canon law directed that none but persons of extraordinary merit should be so buried, and of the fitness or unfitness of particular persons to be thus favoured, they appointed the parson of the parish the *only* judge, as being the individual who ought to be the most *competent*. (*Gibs.* 453; *Wats.* c. 39.)

Privilege of burying in church vested in incumbent, and why.

In like manner it is held to be discretionary in the minister whether a corpse shall be *carried into the church*, or not; and it must at least be admitted, that (as in cases of apprehended infection, by which the whole congregation might afterwards be endangered) it is desirable, that such a discretion should be vested in *some* judicious person, though it *should be*, and in fact *is*, very sparingly exercised.

Discretionary with minister whether or not corpse shall be carried into church.

By 58 Geo. 3. c. 45. no burials are to be permitted in any church or chapel erected under that Act,

New Churches' Act.

Proviso as to
burials.

or in the adjacent cemetery thereof, at a less distance than 20 feet from the external walls, except in vaults wholly arched with brick or stone under any church or chapel, and to which the only access shall be by steps on the outside of the external walls. Penalty for every offence 50*l.*; one half to the informer, and the other to the poor of the parish.

Hindering, or
obstructing
burials, in-
dictable.

A conspiracy to hinder a burial is indictable as a misdemeanour. (2 *Term Rep.* 734.)

And persons wilfully obstructing a clergyman in reading the burial service, are also indictable. (7 *D. & R.* 461.)

Arrest of
corpse for
debt.

The notion that *a corpse may be legally arrested for debt*, either while in the house or custody of relatives or friends, or while on the road to church for interment, is a *vulgar error*. Whether such a law ever prevailed, or not, is doubtful; though it is equally certain that, legal or not, corpses *have* been so arrested (as the bodies of Dryden the poet, and others; and, *it was said*, more recently, that of Sheridan): but the question may now be considered as set at rest for ever by the following quotation from the speech of Lord Ellenborough in the case of *Jones v. Ashburnham*. (4 *East*, 460.) "Such an act as seizing on a dead body upon any such pretence is revolting to humanity, and *illegal*; and therefore any promise extorted by the fear of it could never be valid in law¹. As well might it be said, that a promise in consideration that one would withdraw a pistol from another's breast could be enforced against the party acting under such unlawful terror."

3 Geo. 4. c. 126.
Funerals
exempt from
tolls.

By 3 Geo. 4. c. 126. s. 32. it is enacted, that *no toll shall be taken* by virtue of that, or any other Act, of or from *any inhabitant of any parish, township, or place, going to or returning from attending the funeral of any person who shall die and be buried in any such parish, &c.* in which any turnpike road shall lie.

¹ The plaintiff in a former case had been holden liable to a promise to pay a certain sum in consideration of the forbearance of the defendant to arrest the dead body of her son.

By 48 Geo. 3. c. 75. provision is made for the interment of dead human bodies cast on shore. Churchwardens, &c. of parishes, or constables and headboroughs of extra-parochial places, on receiving notice, are to cause such bodies to be conveyed to some convenient place for speedy interment, with the customary fees, &c. allowed at parish funerals; and every person finding such bodies, and giving notice thereof to such churchwardens, &c. within six hours, shall be entitled to five shillings for his trouble. But persons finding such bodies, and neglecting to give such notice, and every churchwarden, &c. neglecting to remove such bodies from the shore for twelve hours after such notice, to forfeit 5*l.* for each offence.

48 Geo.3.c.75.
Burial of
dead bodies
cast on sea-
shore.

Chapel.

A chapel is either adjoining a church for performing divine service in, or separate from the mother church, where the parish is wide, which is commonly called a *chapel of ease*. Chapels of ease are built for the ease of those parishioners who dwell far from the parochial church, in *prayer* and *preaching* only; for *marriages* and *burials* ought to be performed in the parochial church. (2 *Roll. Abr.* 340.)

Parochial
chapels, and
chapels of
ease.

These chapels are served by inferior curates, provided at the charge of the rector, &c. And the curates are therefore removable at the pleasure of the rector or vicar; but chapels of ease *may be* parochial, and have a right to sacraments and burials, and to a distinct minister, by custom (though subject in some respects to the mother church); and *parochial chapels* differ only in name from parish churches; but they are small, and the inhabitants within the district are few. In some places chapels of ease are endowed with lands or tithes, and in others supported by voluntary contributions; and in some few districts there are chapels which baptize and administer the sacraments, and have chapel-wardens; but these chapels are not exempted from the visitation of the ordinary, nor the parishioners who resort thither from contributing to the repairs of the mother church;

How served,
&c.

especially if they bury there, for the *chapel* generally *belongs to*, and is as it were a *part of* the mother church ; and the parishioners are obliged to go to the mother church, but not to the chapel. (2 *Rol. Abr.* 289.) And hence it is said, that the offerings made to any chapel, are to be rendered to the mother church ; unless there be a custom that a chaplain shall have them.

Repairs of
chapels.

Public chapels, annexed to parish churches, shall be repaired by the parishioners, as the church is, if any other person be not bound to do it. (2 *Inst.* 489.)

Free chapels.

Besides the before-mentioned chapels, there are *free* chapels, perpetually maintained and provided with a minister, without charge to the rector or parish ; or that are free and exempt from all ordinary jurisdiction ; and these are where some lands or rents are charitably bestowed on them. (*Stat.* 37 *Hen.* 8. c. 4. 1 *Edw.* 6. c. 14.) There are also *private chapels*, built by noblemen and others, for private worship, in or near their own houses, maintained at the charge of those noble persons to whom they belong, and provided with chaplains and stipends by them ; which may be erected without leave of the bishop, and need not be consecrated, though they anciently were so, nor are they subject to the jurisdiction of the ordinary.

Private cha-
pels.

Chapels in
universities.

There are likewise *chapels in the universities*, belonging to particular colleges, which, though they are consecrated, and sacraments are administered there, yet are not liable to the visitation of the *bishop*, but of the *founder*. (2 *Inst.* 363.)

New church-
es, how long
to be deemed
chapels of
ease.

Every new church built by the commissioners appointed for building churches, by 58 *Geo.* 3. c. 45. and intended as a parish church of any division of a parish, intended to be a *separate* parish, is a *chapel of ease* during the existing incumbency of the original parish church, and shall be *served by a curate nominated by such incumbent*, licensed by the bishop, and paid by the commissioners.

And by 59 *Geo.* 3. c. 134. a chapel built as above, and situate in a *district* parish, made a parish for

ecclesiastical purposes, and which is not made the *church* of such district, is not to be deemed a perpetual curacy or benefice, presentative even after avoidance by the existing incumbent of the parish.

CHILDREN, ILLEGITIMATE—See BASTARDS.

CHIMNEY-SWEEPERS' APPRENTICES—See APPRENTICES.

Church—Churchwardens— Church-rates.

I. CHURCH.—The soil and freehold of the church and church-yard belong to the parson or incumbent for *public purposes*, and he alone has the right of making any disposition of, or bringing, any action for an injury with respect thereto. (*Bacon's Abr.*)

Soil and freehold of church and church-yard.

No one can make a private door into the church-yard without the consent of the minister, and also a faculty from the bishop. (*Burn's Eccl. Law.*)

Private doors into church-yards.

If the walls, windows, or doors, or any part of the freehold of the church, or church-yard, be injured by any person, the incumbent of the rectory, or his tenant, if let, may have his action for the damages (*Wats. c. 39*); but the *goods* are under the charge of the churchwardens. See CHURCHWARDENS.

Who to bring action for injury to freehold.

By 17 Car. 2. c. 3. in cities and towns corporate, the bishop (with the consent of the mayor, aldermen, and justices of the peace, and of the patron,) may unite two churches or chapels; and make order, with the like consent, that the patrons present by turns, having regard to the value of the livings united.

17 Car. 2. c. 3. The uniting of churches, &c.

The second section enacts, that notwithstanding any such union, each of the parishes so united shall continue distinct as to all rates, taxes, parochial rates, charges, and duties, and all other privileges, &c. whatsoever; and churchwardens shall be elected for such parish, as they were before such union was made.

With respect to the necessary reparation of the church, it may be stated in general, that the parson

Who to repair church.

is bound to repair the *chancel*, and the parishioners the remainder of the edifice.

By the custom of the city of London, in many churches there, it seems that the parishioners are liable to the repairs of the chancel: and so they may be, by custom, in other places.

Parishioners using a chapel of ease, which time out of mind they have repaired, heard service there, married (but not buried), are not discharged from contributing towards the repair of the mother church, the chapel having been ordained only for their ease. (*Hob.* 66. 3 *Mod.* 284.)

If two churches be united, the repairs of each shall be made as before the union. (*Degge*, c. 12. and see preceding page, 17 *Car.* 2. c. 3.)

It is the peculiar province of the Spiritual Court, to take cognizance of the repairs of the church and church-yard, and of neglect, &c. (3 *Black. Comm.* 92.)

But, by the Ecclesiastical Canon, No. 85. the churchwardens, or questmen, shall take care and provide that the churches be well and sufficiently repaired, and so from time to time kept and maintained, that the windows be well glazed, the floors kept paved, plain, and even.

It seems, however, that the churchwardens should in general have the consent of the major part of the parishioners, where the reparation is likely to be of any serious amount; and that they cannot erect, or add any thing *new*, without such consent. See quotations from various Acts, *post*—CHURCH-RATES.

And the consent of the majority of the parishioners towards any improvement or additional ornament for the church (as bells, &c.) will bind the remainder to pay the rate. (2 *Roll. Ab.* 291.)

See BRAWLING IN CHURCHES—PEWS IN CHURCHES—CLERGYMAN—CHURCHWARDEN, &c.

II. Church Rates.

Church rates,
by whom to
be made.

All rates for the reparation of the church are to be made by the churchwardens, with the consent of a

majority of the parishioners, assembled in pursuance of public notice given in the church.

The majority of those that appear shall bind the rest of the parish, or if none appear, the churchwardens alone may make the rate, because they, and not the parishioners, are liable to be cited and punished for defect of repairs. (*Steer*, p. 382.)

Majority at meeting to bind rest of parish.

At the time and place of meeting the minister and churchwardens ought to attend; and when the parishioners are assembled, the minister is proper to preside; and he, or one of the churchwardens, or such person as shall be appointed by them, ought to enter the orders of the vestry, and then have them read and signed; and agreeable thereunto, before making a rate for the repair of the church, a petition to the ordinary for a faculty (setting forth the particulars,) should be drawn up and signed by the minister, churchwardens, and parishioners present and approving thereof. Whereupon the ordinary will issue a monition, to cite all persons concerned to show cause why a faculty should not be granted, upon the return of which citation, if no cause or not sufficient cause be shown, the ordinary will proceed to grant a faculty. (1 *Burn's Eccl. Law*, 357, 8.)

How meeting to be conducted, &c.

After the churchwardens and parishioners have agreed as to what sum is fit for the repairs, they are to make an equal rate for collecting it.

Equal rate to be made.

This rate should be made *before the expense is incurred*, because the propriety and extent of the repairs should be determined before they are undertaken. No church-rate can be legally made for the *reimbursement* of a churchwarden. (12 *East*, 556; *Andrews*, R. 11.) The rate to discharge the expense should always be made *prospectively*. (1 *Bing.* 201. 8 *Moore*, 20.)

Should be made before expense incurred.

As to the mode of assessment, the following rules were laid down by thirteen doctors of the civil law, to be applied generally in all parts of England.

1. Every inhabitant *dwelling within the parish* is to be charged according to his ability, whether in land or living within the same parish, or for his goods

Rules of assessment.

there; that is to say, for the best of them, but not for both.

2. Every farmer *dwelling out of the parish*, and *having lands and living within the said parish* in his own occupation, is to be charged to the value of the same lands or living, or else to the value of the stock thereupon; for the best, but not for both.

3. Every farmer *dwelling out of the parish*, and *having lands and living within the parish in the occupation of any farmer or farmers*, is *not* to be charged; but the *farmer or farmers* thereof are to be charged in particularity, every one according to the value of the land which he occupieth, or according to the stock thereupon; for the best, but not for both.

4. Every inhabitant and farmer *occupying arable land within the parish*, and feeding his cattle *out of the parish*, is to be charged for the arable land within the parish, although his cattle be fed out of the parish.

5. Every *farmer of any mill* within the parish is to be charged for that mill; and the *owner thereof*, if he be an inhabitant, is to be charged for his liability in the same parish besides the mill.

6. Every *owner of lands, tenements, copyholds*, or other hereditaments, *inhabiting within the parish*, is to be charged *according to his wealth in regard of a parishioner*, although he occupy none of them himself; and his *farmer or farmers* also are to be taxed for *occupying* only.

7. The assessors are not to tax *themselves*, but to leave the taxation of them to the residue of the parish. (*God. Append.* 10, 11.)

Parties not to
be assessed.

No man shall be charged with such rate in respect of land which he has in another parish. (*5 Rep.* 67. *2 Roll.* 289.)

Nor in respect of a lighthouse. (*Bunbury*, 81.)

Nor a petty chapman inhabiting another parish, but taking a standing, for rent to be paid by him, in the waste of the manor within the market, for two or three hours every market-day, to sell his commodities. (*2 Roll. Ab.* 289.)

It is said that the patron of a church, as in right of the founder, may claim exemption for himself and tenants. (*Degge*, pt. 1. c. 12.) Parties not to be assessed.

The frequenters of a chapel of ease may also, under certain circumstances, plead exemption by prescription; (2 *Roll's Ab.* 290) as, for instance, if they had time out of mind repaired part of the wall of the church-yard of the parish church, and in consideration thereof, and because they have also time out of mind repaired the chapel of ease at their own expense, and been therefore discharged of the reparation of the parish church—such grounds would form a good prescription. (*Ibid.* and see also *Burn's Eccl. Law.*)

The rectory, and vicarage which is derived out of it, are not chargeable to the repair of the body of the church, steeple, public chapels, or ornaments. They are exempted on account of their being at the whole charge of repairing the chancel. (*Degge*, p. 1. c. 12.)

All lands and houses should be equally rated according to their value. (*Hetl.* 130. *Latch.* 203.) Lands and houses to be equally rated.

A taxation by the pound rate is the most equitable way. (*Wood's Inst.* b. 1. c. 8.) Equitable mode of rating.

The property and parishioners should be equally rated. (*Hetl.* 130. *Latch.* 203.)

If a parish consist of several vills, and there is a custom to levy the rate in certain proportions, such custom must be pursued; for it may be, or may have been in its commencement, reasonable. (*Andrews*, 32.) Custom to be regarded.

If any of the parishioners refuse to pay their rates, being demanded of the churchwardens, they may be sued for in the ecclesiastical courts, but not elsewhere. (*Degge*, p. 1. c. 12.) Mode of recovering rates.

But, by stat. 53 Geo. 3. c. 127. s. 7. for the more easy recovery of church and chapel rates of limited amount, it is enacted, that if any one duly rated to a church or chapel rate, the validity whereof has not been questioned in any ecclesiastical court, shall refuse or neglect to pay the same, any one justice of the county, &c. upon complaint of the 53 Geo. 3. c. 127.

Justices may order payment of rate not exceeding 10*l*.

And recover same by distress and sale.

Power of appeal.

In case of appeal, warrant of distress not to issue.

Ecclesiastical jurisdiction still to extend to questions of validity, &c. and to all rates above 10*l*.

Saving of parliamentary enactments respecting particular parties, &c.

54 Geo. 3. c. 170.

Distress may be made in any district, &c. of same county, &c.

church or chapel-warden, may, by warrant under his hand and seal, convene such person before any two or more such justices, who shall examine upon oath into the complaint, and by order under their hands and seals, direct the payment of what is due in respect of such rate, *provided such sum do not exceed 10*l*. over and above reasonable costs and charges*; and on refusal or neglect of compliance with such order, such amount, with charges, may be levied, by warrant of any one of such justices, by distress and sale of the goods of such offender, his executors or administrators; and any person finding himself aggrieved by any judgment given by such justices, may appeal to the next general quarter sessions, and the justices present, or a majority, may reverse such judgment; but if they affirm the judgment, it shall be decreed by order of session, with costs to be levied by distress and sale. Provided, that in case such appeal be made, no warrant of distress shall be granted until after its determination: provided also, that nothing herein contained shall extend to alter or interfere with the jurisdiction of the ecclesiastical courts to hear and determine causes touching the *validity* of any church or chapel rate, or from enforcing the payment thereof, *if the same shall exceed 10*l*.*; and that if the *validity* of such rate, or the *liability of the person* from whom it is demanded to pay the same, be disputed, and the party disputing its payment *give notice* thereof to the justices, such justices shall *forbear giving judgment thereupon*, and the persons demanding the same may then proceed to the recovery of their demand, according to the course of law heretofore used and accustomed. Provided likewise, that nothing herein shall affect any regulations that may have been made by authority of Parliament, respecting the church or chapel rates of any *particular parishes, or districts*.

And by 54 Geo. 3. c. 170. s. 12. the goods, &c. of any person neglecting to pay any sum legally assessed on him for any churches, for seven days after demand, may be distrained, not only within the district, parish, &c. in which it is made, but also

within any *other* district, &c. within the same county, riding, division, or jurisdiction; and if sufficient distress cannot be found within such county, &c. then, on oath thereof before one or more justices for any *other* county, &c. in which any of the goods, &c. of such person shall be found, such goods, &c. shall be liable to distress and sale in such other county, and may be so distrained &c.

Or in any other county, on oath, &c.

By the 7 & 8 Geo. 4. c. 17. the provisions of the 57 Geo. 3. c. 93. regulating the costs of distresses for rent, &c. are extended to distresses for church rates. See RENT.

Costs of distresses.

A Quaker refusing to pay church rates may be sued, as other parishioners, in the ecclesiastical court; or he may be proceeded against before justices in the same manner as for his tithes, respecting which the 53 Geo. 3. c. 127. s. 6. after reciting that by stat. 7 & 8 Will. 3. it is provided, that "where any Quaker shall refuse to pay or compound for his great or small tithes, or to pay any church rates, two or more justices are authorized to hear and determine the same, not exceeding the value of 10*l.*; and that by a statute of Geo. 1. the said Act is extended to other objects;" enacts, that from and after the passing of this Act (i. e. 53 Geo. 3. c. 127) all the provisions of the said recited Acts *shall extend to any value not exceeding 50*l.**; and that one justice shall be competent to receive the original complaint, and to summon the parties to appear before any two or more such justices.

Case of Quakers refusing to pay.

53 Geo. 3. c. 127.

Before the passing of the 53 Geo. 3. c. 127. considerable delay and expense were incurred in the recovery of church rates. That Act, as we have seen, provides a summary remedy, by application to justices of peace in cases of withholding those rates not exceeding 10*l.*, where the party does not dispute the obligation to pay them, but does not invest justices with the power which belongs exclusively to the ecclesiastical court—that of deciding on the *validity* of the rate, or the *liability* of the person to pay it. (*Chitty's Burn's Justice*, v. 1. p. 630.)

Summary of the powers of justices respecting church rates.

Preliminaries
to issuing
warrant, &c.

The justice to whom original complaint is made cannot issue his warrant, unless it be made *affirmatively* to appear before him, that *the amount does not exceed 10l.*, and that no *question* is made on the rate in the ecclesiastical court. If neither of those preliminary exceptions exist, the party may give notice to the two (or more) justices (before whom he is to appear) that he disputes the *validity of the rate*, or his *liability to pay it*, though no proceeding is actually commenced in the ecclesiastical court: and any expression by him, manifesting that he disputes the rate *bonâ fide*, will be sufficient notice to put a stop to the proceedings before the justice. (*Rex v. the Chapel-wardens of Milnrow*, 5 Maul. & Sel. 248. *Steer's Parish Law*.)

Church rates
under new
acts for build-
ing additional
churches.

Under the several Acts for promoting the building of additional churches, are numerous important clauses for the collection of the church rates, the principal of which are as follow:—

58 Geo. 3. c.
45.

Money exp-
ended and
advanced by
commission-
ers, to be
raised by
church rate.

Persons to be
appointed to
raise the rate
in extra-
parochial
places.

Power to
churchwar-
dens, &c. to
borrow
money on
rates.

By the 58 Geo. 3. c. 45. s. 56. all money expended in purchasing sites, and advanced by the commissioners to any parish, &c. shall be charged on the church rates, and raised by the churchwardens, &c.

Sect. 57. In cases of money so expended or advanced for extra-parochial places in which no church-rate shall be made, any justice may appoint persons with the powers of churchwardens, who shall raise such money by church rates.

Sect. 58. empowers churchwardens, with consent of the vestry, and persons appointed under preceding sect. with consent of a majority of voters in a vestry, (with notice given in church or chapel) to borrow money on the rates, and to raise by rates money sufficient to pay the interest and one-twentieth part of the principal, until the whole money borrowed be repaid.

Power to
raise money
for extending
accommoda-
tion in exist-
ing churches,
&c.

Sect. 59. empowers churchwardens, with consent of vestry, and of the bishop and incumbent, to borrow sufficient money on the rates for enlarging the accommodation in any existing church or chapel, and to make rates for payment of the interest, and for pro-

viding a fund for repayment of the principal. But *Proviso.*
one half of such additional accommodation shall be
free seats.

Sect. 60. That no application to build or enlarge any church or chapel, wholly or in part, by means of rates, shall be made, *unless the major part of the inhabitants and occupiers assessed to the poor, in vestry assembled, shall consent thereto, or where the parish shall be under the care of a select vestry, with the consent of four-fifths thereof, such consents to be certified to some justice by an overseer of the poor; nor unless two-thirds in value of the proprietors of lands within the parish shall have consented thereto.* (But see below.)

By the 59 Geo. 3. c. 134. s. 24. after reciting so much of the preceding sect. of the 58 Geo. 3. c. 45. as requires the consent of two-thirds in value of the proprietors of lands, and *repealing such provision*, it is enacted, that no application to build or enlarge any church or chapel shall be made, nor any purchase made of any new or additional burial-ground, by means of rates on any parish, where *one-third in value* (to be ascertained by an average of the poor rate for the preceding three years) *of the proprietors of tenements in such parish, whether freehold or copyhold, or for terms of years absolute, whereof fifteen shall be unexpired, or determinable on a life or lives,* shall dissent therefrom.

Sect. 25. That it shall be lawful for the inhabitants of any parish, or the majority of them, assembled at any vestry (of which notice shall have been given on two previous Sundays), and of two-thirds of the persons exercising the powers of vestry, assembled at any meeting of which due notice shall have been given, to order any rate *not exceeding one shilling in the pound in any one year, or five shillings in the pound in the whole*, upon the annual value of the property in the parish, for the purpose of building or enlarging any church or chapel, either wholly or in part, without any further consent of inhabitants, occupiers, &c.; but no *larger* rate than aforesaid shall be so ordered in relation to any application to

Churches, &c. not to be built or enlarged by means of rates, without consent of majority of inhabitants, or four-fifths of select vestry, or two-thirds of occupiers of land. [But see below, s. 24 and 25 of 59 Geo. 3. c. 134.]

59 Geo. 3. c. 134. Repeal of part of 58 Geo. 3. c. 45.

No application to build or enlarge churches, &c. to be made if certain number of proprietors of tenements, &c. dissent.

Rate of 1s. in the pound for any one year, or 5s. in the whole, may be raised for building or enlarging churches, &c. without the consent of proprietors, &c. as required by 58 Geo. 3. c. 45. s. 60.

Proviso as to larger rate.

build or enlarge any church or chapel by means of rates, if any such proportion of dissents, as specified in Sect. 24, be signified as there directed.

Rates may be laid on parish for taking down and rebuilding church, with certain consents.

By the 40th section it is enacted, that when any parish shall be desirous of increasing the accommodation in the parish church, and it shall be expedient to take down the existing church, and to rebuild it on the same or a more convenient site, it shall be lawful for the churchwardens, with the consent of the vestry, or persons possessing the powers of vestry, and of the ordinary, patron, incumbent, and lay impropriator, if any, to take down such existing church, and to rebuild it on the same or a new site; and the churchwardens are empowered to borrow, on the credit of the rates, money necessary for defraying the expense: but that no church shall be so taken down and rebuilt, if such proportion of dissents, as specified in sect. 25, be signified in writing as thereby directed; and such church, when consecrated, shall be the parish church for divine offices and marriages; provided that *one half of the additional accommodation* obtained by rebuilding such church *shall be set apart for free sittings*, and that persons enjoying pews or sittings, by virtue of any faculty or prescription, shall have similar pews, &c. as near as may be to the same situation, of like size, &c. and that all tombstones, &c. shall be carefully preserved by the churchwardens, and set up again, &c.

Money may be borrowed on rates.

No church to be taken down if dissent specified in s. 25. be signified.

Half additional accommodation to be free sittings.

Tombstones, monuments, &c. to be preserved.

58 Geo. 3. c. 45.

District churches, &c. to be repaired by rate on district;

And districts to be liable for repairs of parish church for 20 years.

Sect. 70 of 58 Geo. 3. c. 45. provides, that repairs of district churches or chapels are to be made by rates upon the district, as though a separate parish; and the 71st sect. enacts, that districts shall be subject to the repair of the original parish church for twenty years after the district church shall be consecrated, after which the parish church shall be repaired by the remainder of the parish, and each district shall make separate rates for such repairs, as if separate parishes.

59 Geo. 3. c. 134. Churchwardens, with consent of vestry, &c.

The 14th sect. of the 59 Geo. 3. c. 134. empowers churchwardens, with the consent of the vestry, bishop, and incumbent, to raise on credit of the church rates, the expenses of repairing any churches or chapels,

and if such money shall be borrowed, to raise by rate a sum sufficient from time to time to pay the interest thereof, and not less than 10 per cent. of the principal, until the whole be repaid.

may raise money for repairs of churches, &c. and impose rate for re-payment thereof with interest.

There are several other recent statutes relating to the building, &c. of churches, the last of which is the 1 and 2 Will. 4. c. 38 ; but as they do not contain any enactments of public interest with reference to *rates*, and relate rather to ecclesiastical law than to our subject, it is not essential to our design to quote them.

III. Churchwardens.

Churchwardens, anciently styled *church-reeves*, or *ecclesie guardiani* (guardians of the church), are officers instituted to protect the edifice of the church ; to superintend the ceremonies of public worship ; to promote the observance of religious duties ; to form and execute parochial regulations ; and to become, as occasion may require, the legal representatives of the body of the parish. (*Bac. Abr.* ; *Black. Comm.*)

Churchwardens, their office.

The office was originally confined to such matters only as concerned the church, considered *materially* as an edifice, or place for public worship ; and the duty of suppressing profaneness and immorality was entrusted to two persons annually chosen by the parishioners as assistants to the churchwardens, who, from their power of *inquiring* into offences deemed prejudicial to the interests of religion, and of presenting the offenders to the next provincial council, or episcopal *synod*, were called *quest-men*, or *synod's-men*, (*Kennett's Paroch. Antiquities*), which latter appellation is still retained, though corrupted into *sidesmen*.

In general the number of the churchwardens in every parish is *two*. (2 *Str.* 1246.)

In number generally *two*.

When sworn in, they are so far incorporated in law as to sue for the goods of the church, and to bring an action of trespass for them ; to purchase goods for the use of the parish ; and to receive legacies, &c. for the benefit of the church or parish ; but,

How far incorporate.

except by the custom of London, they are not so far corporate as to purchase lands, or take by grant. (*Gibs.* 241.)

But one churchwarden cannot *solely* dispose of the goods of the parish, nor can *both* without the consent of the parishioners. (1 *Roll. Ab.* 393; 1 *Vent.* 89; *Yel.* 173.)

We shall proceed to consider, respecting the office of churchwarden;

I. *Who may be elected, and who exempt from serving; the time and mode of election; and who competent to elect.*

II. *General Duties, Interest in Goods of Church, &c. and Powers.*

III. *Their Accounts; and remedies against them for misbehaviour.*

I. ~~Who~~ *Who may be elected, and who exempt from serving; the time and mode of election; and who competent to elect.*

Who may be elected.

As to *who* may be elected, it seems only necessary to say, that *all parishioners*, against whom no legal disqualification exists, and who are not included within the exemptions which are enumerated below, are qualified and liable to be elected to serve the office. *Poverty*, it is certain, is no disqualification; for if a poor man be elected, the parishioners who have chosen to trust him, take the risk of his misconduct. (*Rex v. Simpson*, 1 *Stra.* 609.)

Who exempt.

Those exempted are:

Peers.

1. All *peers of the realm*, by reason of their dignity. (*Gibs.* 215.)

Clergymen

2. All *clergymen*, by reason of their order. (*Ibid.*)

Members of Parliament.

3. All *parliament men*, by reason of their privilege. (*Ibid.*)

Barristers and Attornies.

4. All *counsellors and attornies*, by reason of their attendance on the courts at Westminster. (2 *Roll. Abr.* 272.)

Clerks in Court.

5. All *clerks in court*. (1 *Roll. Rep.* 368.)

Medical men.

6. All *physicians, surgeons, and apothecaries*, duly qualified to practise as such. (*Gibs.* 215; 6 & 7

Will. 3. c. 4.; 18 Geo. 2. c. 15.; 5 Hen. 8. c. 16.; and 32 Hen. 8. c. 40.)

7. All *dissenting teachers* or *preachers*¹ in holy Dissenters. orders, or pretended holy orders, being duly qualified according to the *Act of Toleration*, 1 Will. 3. sess. 1. c. 18; 52 Geo. 3. c. 155. s. 9.

8. All *Roman Catholic ministers*, on taking the oath and conforming to the regulations prescribed by the statute which exempts them; viz. 31 Geo. 3. c. 32. s. 8.

9. All persons who have *prosecuted any felon to conviction* (10 and 11 Will. 3. c. 23. s. 2. and 58 Geo. 3. c. 70.) This exemption from parish and ward offices, though still erroneously retained in most law-books, *no longer exists*, the statutes of 10 and 11 Will. 3. and 58 Geo. 3. above referred to, *having been absolutely repealed* by 7 Geo. 4. c. 64. and 7 and 8 Geo. 4. c. 27. Convicts of felons.

10. All *sergeants, corporals, drummers* and *privates*, in the *militia*, from the time of their enrolment until their discharge, are exempted from serving as a peace or parish officer of any kind². Soldiers, &c.

11. *Aliens, Jews, infants*, and *persons convicted of felony*. (*Hagg. Rep.* 19.) Aliens, &c.

12. *Justices of the peace, aldermen, and magistrates*. (1 Burr. 245; Cro. Car. 485; Doug. 331; 6 Mod. 140); but there seems some doubt as to whether all these are *absolutely exempt*; and especially whether aldermen generally, except in London, can claim exoneration. (*Add. Pen. Stat.* 161.) Justices and Magistrates.

13. All persons *holding any public office* which requires a constant and personal attendance; but not where their duty can be performed by deputy. (*Esp. N. P.* 359.) Thus, an *officer of the customs* Public officers.

¹ Other dissenters from the established church who shall scruple to take upon themselves the office, or to take the necessary oath, may perform the duties by *deputy*, to be approved by the Ordinary. 1 Will. 3. sect. 1. c. 18.

² So, also, it is presumed, are all officers and men actually *serving* in the regular army, local militia, or yeomanry; (52 Geo. 3. c. 38. and 57 Geo. 3. c. 44.) and *officers* in the navy or marines. (*Bott.*) But *seamen* do not appear to be exempted.

is exempt (8 *T. R.* 375); and consequently, it is presumed, all clerks, &c. in government offices.

Ex-parish-
ioners.

14. All persons *living out of the parish*, notwithstanding that they occupy lands within it. (*Gibs.* 215; 1 *Hagg.* 10.) But *partners of a house in trade* within the parish, though *not personally resident* within it, are *not* exempted. (1 *Hagg. Rep.* 379; 1 *Barn. & Cres.* 123—178; 2 *ib.* 322.) In the case of *Stephenson v. Langston*, quoted in 1 *Haggard's Reports*, 379, (to which we have just referred) it seems, indeed, to have been clearly established, that as, from the fact of a man's being a partner in trade within the parish, he is unquestionably a parishioner *capable of voting in vestry*, so also is he liable to be elected to serve the office of churchwarden, let his *residence* be where it may. Sir W. Scott, in giving judgment, referring to some other cases of a similar kind, expressed the most decided opinion, that every man carrying on trade within a parish, who could make it convenient to come from his *residence* to his *place of trade* sufficiently often to attend to his business, was equally capable of devoting the necessary time and trouble to the duties of churchwarden, and was therefore liable to be called on to act in that capacity. And in the case of the *King v. Poynder*, in the court of King's Bench, it was adjudged, that each of three partners in trade was liable to serve the office of *overseer*, as a householder within the 43 Eliz., although *no one of them resided on the premises*. (1 *Barn. & Cres.* 178; 2 *Dowl. & Ryl.* 258.)

Ale-house
keepers.

15. It seems doubtful as to *ale-house keepers*, (6 *Mod. Rep.* 41.) who, according to Chief Justice Holt, cannot be appointed as *constables*; and by 22 Geo. 3. c. 83. and 49 Geo. 3. c. 124. the exemption is extended to visitors and deputy visitors of workhouses of united parishes or townships in incorporated districts, or of any parish or township having adopted those acts.

Time of elec-
tion.

By the 90th canon of the church, it was ordered that churchwardens should be chosen annually every Easter week.

By canon 89 they are not to remain longer in office than one year, unless re-elected; or by canon 118, no longer than till the new churchwardens are sworn. Continuance in office.

The day in Easter week on which churchwardens should be chosen, is that of which the minister shall give public notice in the church on the Sunday preceding, unless the day so appointed infringe on immemorial custom. The day usually fixed on is Easter Tuesday. The day in Easter week usually appointed.

In the election of churchwardens by the parishioners, the majority of those who attend the vestry, after notice of meeting, will bind the rest of the parish. (*Southwark Case, Lane's Rep. 21.*) Majority of parishioners at vestry, to bind the rest.

As to the mode of summoning the vestry, it is enacted by stat. 58 Geo. 3. c. 69. s. 1. that no vestry meeting shall be holden until public notice shall have been given thereof, and of the place and time of holding the same, &c. at least three days before the appointed time, by the publication of such notice in the parish church or chapel, on some Sunday immediately after divine service, and by affixing the same on the principal door of such church or chapel. (See further, tit. VESTRIES.) Mode of summoning vestry.

The churchwardens whose office is about to expire, are properly the returning officers at the new election; but the mode of election must be by show of hands, or by poll; and any other mode, contrived for the purpose of concealing for which candidate the elector votes, is illegal. (4 *Barn. & Cres.* 499; 6 *Dowl. & Ryl.* 517.) Mode of election.

If, after a show of hands, a poll is demanded, the subsequent polling destroys the previous election by a show of hands. (1 *Hagg. Rep.* 9.)

If there be a custom to conclude the election at a certain time, that being a reasonable time, the electors must tender their votes within it. (7 *East.* 573.)

The voters appear to have the power of adjourning the poll (2 *Str.* 1045); and any attempt to disturb the election is punishable in the ecclesiastical court. (2 *Barn. & Ald.* 48.) Power of adjourning the poll.

The churchwardens, after their election, are to take Churchwar-

dens to take an oath. an oath to execute the office truly and faithfully; and until they be sworn they must not execute the office. (*Gibs.* 243; *Shaw's Par. Law*, 1753; *Steer*, 1830.)

The oath is as follows: (*Gibs.* 243.)

Form of oath. "You shall swear truly and faithfully to execute the office of a churchwarden within your parish, and according to the best of your skill and knowledge present such things and persons as to your knowledge are presentable by the laws ecclesiastical of this realm; so help you God, and the contents of this book."

This form was originally agreed on by mutual consultation between the civilians and common lawyers, and has since received the sanction of the Court of King's Bench. One would have thought, however, that the "mutual consultation" of any body of men of ordinary capacity might have produced an oath somewhat more satisfactory and intelligible than the one quoted, which is the form *still used*.

By whom oath to be administered.

The oath is to be administered by the Archdeacon or Ordinary of the diocese, without fee; and if he refuse to administer it a *mandamus* will lie to compel him. (*Comyn's Dig*; *Bacon's Abr.*)

Churchwardens may be compelled to take oath and office.

A churchwarden duly elected may be directed by the ecclesiastical court to take the oath of office before the proper Ordinary; and if he refuse to take the office and oath, he may be excommunicated. (*Phill. Rep.* 166; *Gibs.* 216, 243, 961.)

How right to be determined where two sets of churchwardens are chosen.

If, in consequence of a contest as to the right of making the election, or other cause, two sets of churchwardens be chosen, the right must be determined by an *action at law*. (1 *Black. Rep.* 28; 1 *Keb.* 517, &c.) So, the courts of common law are also the proper ones for deciding on the validity of any *custom* of choosing churchwardens; or on the legality of any votes which may be questioned during the election. (*Cro. Car.* 552; *Burr.* 1420.)

How, in questions as to custom, or legality of votes.

The spiritual court, however, may become the means of trying the validity of the election, by a return of "not elected," "not duly elected," or any other return that affords an opportunity of trying the

right in an action for a false return. (*Burn's Justice.*)

By the canons of the church 89 and 90, it is ordained, that churchwardens shall be chosen by the joint consent of the minister and parishioners, if it may be; in which case, it seems that the minister has only a *single voice* like any other parishioner. (*Wood's Inst.* 88); but if the minister and parishioners cannot agree upon such choice, then *the minister shall choose one, and the parishioners the other.* And without such joint or several choice, none shall take upon themselves to be churchwardens. (*Gibs.* 241; 1 *Stra.* 145; 2 *Stra.* 1246.)

Who to elect,
by the canon
law.

But as these canons of the church have never been confirmed by legislative enactment, they are observed in such cases only in which they do not militate against the known laws of the realm, or the established usages and customs of particular parishes. (2 *Atk.* 650.)

Canons not to
prevail
against cus-
tom, &c.

The election of churchwardens, therefore, depends chiefly upon the custom which has prevailed from time immemorial in different parishes. These customs are, of course, various:

Election by
custom most
frequent.

Churchwardens, therefore, are sometimes appointed by the minister, sometimes by the parishioners, and sometimes by both together. (1 *Black. Com.* 394; 2 *Atk.* 650; and other authorities.) And for this purpose the curate is included under the term minister. (*Ibid.*)

Customs, va-
rious.

Sometimes the power of election is in a select vestry, or a particular number of the parishioners, and not, as in others, in the parishioners at large. (*Hard.* 878; 1 *Mod.* 181.)

In some cases the lord of the manor has the power of electing the churchwardens, by prescriptive right. (1 *Inst.* 653; 1 *Hen. Black.* 28.)

If the minister who has by custom the right to choose one churchwarden be under sentence of deprivation, the right of choosing *both* devolves on the parishioners. (*Carth.* 118; *Hard.* 378.)

And the minister, in any case, cannot intermeddle in the choice of that churchwarden whom the

parishioners are by custom entitled to elect. (2 *Stra.* 1045.)

Neither the spiritual court, nor its officers, can interfere.

Nor can the archdeacon, or any others, who by virtue of their office are required to swear and admit churchwardens, in any way control the election. (*Bacon's Abr.*)

The spiritual court cannot, generally, control or examine into elections. (1 *Salk.* 166.)

Parishioners' right to be exercised in vestry.

Where the right of appointing exists in the parishioners, it must be exercised in vestry assembled. (2 *Stra.* 1045.)

Where custom not observed, canons must be.

Where the custom of a parish, from any circumstances of a special nature, cannot be observed, it is held that the election must be made according to the rule of the *canons*; that is, they must then revert to the law of the canons of the church 89 and 90, before quoted, which ordain that churchwardens shall be chosen by the minister and parishioners jointly, and if they cannot agree, the one by the minister, and the other by the parishioners. Thus, in a case where the custom was proved to be for the old churchwardens to choose one of the new ones, and the minister the other, and they could not agree, whereupon the parishioners at large elected an individual named Catten, the court held, that by the disagreement between the old churchwardens and the minister the custom was superseded, and that they must therefore resort to the canons, as the parishioners had correctly done, under which Catten having been duly elected, they decreed in his favour, with costs. (*Catten v. Berwick*, 1 *Stra.* 145.)

Case.

Custom of London.

In the city of *London* the custom is for the parishioners of each parish to choose *both* the churchwardens, without the interference of the minister; and there being a special custom to that purpose, the canon cannot remove it, especially in that city, where the parson and churchwardens are a corporation to purchase and grant lands; for if the parson, being himself one, were allowed to nominate another of the three persons (*viz.* himself and the two churchwardens for the time being) constituting the corporation, he would be possessed of too great a power

over the parish interests. (*Cro. Jac. 532. 1 Roll's Abr. 339.*)

But though in most of the parishes in London the parishioners by custom choose both of the churchwardens; yet in all *new* parishes (in which no custom can by possibility prevail; for every custom, to be valid, must have been established at least as early as the first year of the reign of Richard I. see *Black. Comm.* vol. i.) the election of churchwardens must be in conformity with the rule of the canons, unless the particular Act by virtue of which any church was erected, or parish constituted, shall have specially provided to the contrary.

Law which must regulate new parishes in London.

And in the recent Acts for building additional churches, the provisions therein as to who shall elect churchwardens are made on the same principle as the canons. By the 58 Geo. 3. c. 45. s. 73. it is enacted, that two fit persons shall be appointed churchwardens for every church or chapel built under that Act, at the usual period of appointing such officers, *one by the incumbent, and the other by the inhabitant householders* in the district. The same enactment is repeated in other Acts; but in the 1 and 2 Will. 4. c. 38. passed to encourage *individuals* to build, or promote the building of churches and chapels in certain cases, and in consideration thereof to give them the right of nomination, with power to let pews, &c. it is provided, that the churchwardens who are to be chosen for every such church or chapel *so built*, shall be chosen, one by the incumbent, and the other by the *renters of pews* in such church or chapel.

Election under new acts for building churches. 58 Geo. 3. c. 45.

1 and 2 Gul. 4. c. 38.

II. *The general Duties and Powers of Churchwardens, their Interest in the Goods of the Church, &c.*

It has already been noticed, that churchwardens are, for some purposes, held to be a corporation at common law; and that in that capacity they may purchase goods for the use of the parish, bring actions, &c. (1 *Burn's Eccl. Law*, 408.) But they

Churchwardens' rights in personal property.

cannot *dispose* of such goods without the consent of the parishioners. (*Cro. Jac.* 234.)

If, however, they *do* improperly dispose of them, it seems the inhabitants have but slender remedy; for, says Dean Prideaux, "they must tarry till new churchwardens are chosen, who have a right to call their predecessors to account before the ordinary, and to commence suit against them for any damage done the parish by their violation of the trust reposed in them." (*Prideaux's Directions*.) The parishioners cannot themselves sue, either to recover the goods, or otherwise.

Their rights
in real pro-
perty.

But the corporate character of churchwardens does not enable them to purchase *lands*, or to take by grant, *except in London*, where they are a corporation for those purposes also. (*Gibs.* 215; *Cro. Jac.* 532.) And therefore, in general, all gifts of lands to a parish, for the use of the church, should be devised to trustees for the use intended, to be renewed as the trustees die off; and the churchwardens cannot grant leases of such lands, nor maintain trespass or other action for entry or taking possession of them. (*12 Hen. 7. 29. a. Steer's Par. Law.*)

9 Geo. 1. c. 7.

They are, however, enabled, jointly with the overseers, by the 9 Geo. 1. c. 7. s. 4. with the consent of the major part of the parishioners or inhabitants in vestry, to purchase houses to lodge and employ the poor in; and the 59 Geo. 3. c. 12. s. 17. enacts, that churchwardens and overseers shall take and hold, as a body corporate in behalf of the parish, all buildings, lands, and tenements, *belonging to the parish*. But in order to constitute the body corporate intended by this Act, there must be *two overseers, and a churchwarden* or churchwardens. (*4 Barn. & Cres.* 462; *6 Dowl. & Ryl.* 524.)

59 Geo. 3. c. 12.

Their duties
in general.

Churchwardens are officers of the parish in ecclesiastical affairs, as the constables are in civil; and the main branches of their duty are to *present what is presentable*¹ by the ecclesiastical laws, and to *repair the church*. (*Prid. Direct.* p. 1.) They are

¹ See post, p. 106, as to presentments.

also bound to repair and keep in order the goods and ornaments of the church, and have numerous other duties of an important character, part imposed on them by the canon law, as guardians of the church, and part by the statute law, as officers of the parish.

They have a special property in the organ, bells, parish books, Bible, chalice, surplice, &c. and other goods belonging to the church, and for any damage done to them they may either bring an action at law, or indict the offender. (*Wats. c. 29. Bacon's Abr.*)

Have a special property in goods of church.

But they have no right to, or interest in, the *freehold* and inheritance of the church, which belongs solely to the parson or incumbent. (*Bac. Abr.*) and see CHURCH.

But no interest in freehold.

Neither can they take down armorial bearings in windows, nor deface grave-stones or monuments erected in the church or church-yard; if they do so, an action lies by the heirs or executors of the parties for whom they were erected. (*Roll's Abr. 625.*) And see CHURCH.

Nor power to take down arms, or deface monuments, &c.

The 58 Geo. 3. c. 45. empowers churchwardens to sue for and recover pew-rents of new churches (see PEWS IN CHURCHES); and s. 74 of the same statute enacts, that the churchwardens of every parish in which any additional *chapel* shall be built without making any division of such parish into separate parishes or district parishes, shall do all such things as churchwardens under that Act are empowered to do.

58 Geo. 3. c. 45. May sue for rents of pews in new churches (but see PEWS).

The authority of churchwardens extends over the whole parish of which they are chosen, although it happens to run into another hundred or county; in which they differ from constables, overseers, and other parish officers, who must be chosen for every hundred, &c. though in the same parish. Another reason of this is, that churchwardens being employed chiefly in ecclesiastical matters, must follow the division adopted by the ecclesiastical jurisdiction, which consists of dioceses, archdeaconries, deaneries, and parishes; and therefore, so long as it is the same parish, deanery, &c. the churchwardens' authority extends over every part of the parish, whatever the number of hundreds or counties in it may be. (*Shaw's*

Their authority extends over the whole parish, though running into another county, &c. and why.

Par. Law, p. 78. 1753.) And the parish is reputed to be within that deanery, archdeaconry, &c. in which the church stands. (*Ibid.* p. 79.)

Seating parishioners in church.

Churchwardens have, with the consent of the minister, the placing of the parishioners in the pews in the body of the church (see tit. *PEWS*); and in *London*, by custom, they have this authority in themselves.

Church rates.

The churchwardens have not the power to make any rate of themselves exclusive of the parishioners; their duty being to summon the parishioners to a vestry. (See further, *CHURCH RATES* and *VESTRIES*.)

Every churchwarden an overseer of the poor.

By 43 Eliz. c. 2. s. 1. every churchwarden is an overseer of the poor. Before the passing of that Act, they were the *only* overseers, and as the statute speaks of them as such, and requires others to be added to them, they are deemed to require no formal appointment, but to be overseers by the fact of becoming churchwardens. *As* overseers they have therefore, under the said Act, concurrent authority with the overseers, in the exercise of their duties relative to the poor; but as it is their more immediate duty to attend to the concerns of the church, the care of the poor is now usually intrusted to the overseers, and guardians, or select vestries when duly appointed.

55 Geo. 3. c. 137.

By 55 Geo. 3. c. 137. s. 6. churchwardens, overseers, and persons having the management of the poor, are prohibited from being concerned in any contracts, &c. for supplying, for their own profit, any goods, &c. for the use of the poor or workhouse, under the penalty of 100*l*. This enactment is comprised in the 6th sect. of the statute referred to, which provides, that no churchwarden, overseer, or other persons in whose hands the collection of the poor-rates, or the providing for, ordering, management, &c. of the poor of any parish, &c. shall be placed, jointly with or independently of such churchwardens and overseers, or any of them, by virtue of any Act of Parliament, shall either *in his own name, or in the name of any other person or persons*, provide for his or their own profit, any goods, materials, or provi-

Churchwardens, and other persons having management of the poor, not to be concerned in contracts while in office.

sions, for the use of any workhouse, or otherwise for the support of the poor of such parish, &c. during the time which he or they shall retain such appointment; nor shall be concerned, *directly or indirectly*, in supplying the same, or in any contract relating thereto, *under pain of forfeiting 100l. with full costs of suit, to any person or persons who shall sue for the same* Penalty 100l. and costs. in any of His Majesty's courts of record at Westminster: *provided nevertheless*, that if it shall happen in any parish, &c. that *a person or persons competent to undertake the supply* of any of the articles or things required for such workhouse, or the use of the poor there, *cannot be found within a convenient distance* therefrom, other than and except some or one of such churchwardens, overseers, &c. then and in every such case it shall be lawful for any *two or more neighbouring justices* of the peace, (proof thereof being first duly made before them upon oath) by *certificate* under their hands and seals, to permit and suffer any one or more of such churchwardens, &c. to contract for such goods, &c. Exception, in cases where two or more justices certify that no other person within a convenient distance can be found to supply articles required.

For the better information of churchwardens as to those particulars which they are to *present*, (see *Presentment* in Glossary) articles are to be given them, extracted from the laws of the church (for the most part founded on the canons made in 1603, and the rubrics of the Common Prayer) according to which they are to make their presentments. (*Prid. Direct.*) Presentments.

They are obliged twice every year (i. e. at the visitation of the bishop, archdeacon, or other ordinary) to make their presentments of all such things as are amiss in their parishes, and may, if they think fit, do it oftener, as there shall be occasion; but cannot be forced thereto, except only when the bishop visits. (*Ibid.* But see below.) When to be made.

According to the articles thus delivered to them, churchwardens are obliged, at the visitation of the ordinary, to make their presentments, not merely from their own knowledge, but also from *common fame*, in order that inquiry may be made; and they are guilty of the breach of their oath whenever they May be made from report as well as knowledge.

omit to do so. (*Ibid.*) And they may be proceeded against for such breach of oath, and in the interim be barred the communion by the minister of the parish. (*Ibid.*)

Although the great changes which have taken place in the manners and habits of the people have relieved churchwardens from the invidious duty of enforcing attendance at church ; from the necessity of presenting those to ecclesiastical censure who do not attend ; preventing the excommunicated from entering its walls, &c. ; yet they are esteemed the guardians of the moral character and public decency of their respective parishes, and in making their presentments (now usually made at the Easter visitation, when they go out of office, and before their successors are sworn), they are still authorized, and indeed compellable, by the canon law, to present for censure :

Who and
what should
be presented.

All absentees from the parish church, or other tolerated place of public worship.

All brawlers in the church, or persons creating disturbance, or conducting themselves disorderly or irreverently in the church or church-yard.

All irregularities, disgraceful to his sacred functions, or not sanctioned by law, in the rector, vicar, or curate, whether relating to his ministerial office, or his moral character.

All tipplers in ale-houses, &c. during divine service, on the Lord's day ; &c. &c.

The minister, it seems, may present, where the churchwardens neglect to do so (*Can.* 113) ; but such presentment must be on oath. (2 *Vent.* 42.)

This power of presentment, however, notwithstanding the church canon, should only be exercised by churchwardens in flagrant cases, and even then with the utmost caution, and on irrefragable grounds, lest they render themselves liable to an action for damages.

Other duties.

Observance
of the
Sabbath.

It is moreover the duty of churchwardens, to see that the penalties be levied for persons exercising their calling or using unlawful pastimes on the Lord's day. (29 *Car.* 2. c. 7 ; 1 *Car.* c. 1.)

Decorum in
church.

To maintain order and decorum in the church, church-porch, and church-yard, during service ; in

the execution of which duty they may justify taking off a person's hat, if he refuse to take it off himself upon request. (1 *Lev.* 197 ; *Can.* 88.)

To see that the church-ways be well kept and repaired ; the right to which may be maintained in the spiritual court. (2 *Roll's Abr.* 287.)

Maintenance of church ways.

To take care that there be in the church a large Bible, book of Common Prayer, book of Homilies, a font of stone, a decent communion table, with proper coverings, the ten commandments set up at the east end, and other chosen sentences upon the walls, a reading-desk, a pulpit, and a chest for alms ; all at the charge of the parish. (*Canons* 80 to 84.)

To provide font, communion-table, and other necessities for worship.

To keep the keys of the belfry, and to take care that the bells be rung on proper occasions, and no other ; the propriety of which is to be determined by the minister and themselves. (*Can.* 88.) The consent of the minister, whether incumbent or curate, is necessary to authorise the ringing of bells, and the churchwardens' only insufficient. The minister's concurrence must *always* be had. If the two churchwardens differ, the consent of the minister and one churchwarden would be sufficient ; but the consent of the minister against both churchwardens could not justify the ringing ; nor would the consent of both churchwardens against the minister authorize it. The minister has authority to limit the time of ringing, and the ringers are bound to obey him ; and no person has a right, without the consent of the minister, to place flags, garlands, or any thing else, either in or upon the church, or in the church-yard. (Cited in *Bird's Par. Matters*, as the opinion of Dr. Lushington.)

To prevent bells ringing except on proper occasions.

Opinion as to consent necessary for ringing.

Churchwardens are also bound to furnish register books, adapted to the forms specified in the 52 Geo. 3. c. 146. s. 2. at the expense of the parish or chapelry, whenever required by the rector, vicar, curate, or officiating minister, so to do. And such books are to be of paper, unless required to be of parchment. See an abstract of stat. 52. Geo. 3. c. 146. under tit. PARISH REGISTERS.

To supply parish register books when required.

A dry well-painted iron chest is to be also provided Where regis-

ters to be
kept.

at the expense of the parish, in which the parish registers are to be securely kept by the rector, &c. or other officiating minister, either in his own house (if resident within the parish or chapelry), or in the parish church or chapel. (Sect. 5. of same stat.)

Copies there-
of to be made
annually, &c.

And the churchwardens are annually to make fair copies (if required so to do by the rector, &c.) of all the entries of baptisms, burials, &c. in the said register books, at the expiration of two months after the end of each year, and to attest the verification of the same by the minister. (Sect. 6.)

They are to transmit such annual copies to the registrar of the diocese by post, on or before the 1st of June in each year; and to report the neglect or refusal of the minister to verify the same (s. 7 and 9). See PARISH REGISTERS for further details.

Communion
wine, &c.

They shall provide bread and wine for the communion. (*Can. 20.*)

Burial of
suicides.

They are not to suffer self-murderers, or excommunicated persons, to be buried in the church or church-yard, without special license from the bishop. (*Degge, 183.*) But now as to the burial of a *felo-de-se*, see BURIAL.

County rate.

They, or the overseers, are to pay to the high constables the general county rate, out of the money collected for the poor. (12 Geo. 2. c. 29.)

Charity
briefs.

They are also bound to collect the money on charity briefs (which are letters patent issuing out of Chancery, to license collections to be made to rebuild churches, restore loss by fire, &c.); and the sums collected, &c. are to be indorsed on the briefs in words at length, and signed by themselves and the minister; and farther, when the said brief shall be so indorsed, they shall, on request, deliver the same, with the money collected thereon, to the person authorised by the brief to receive the same. These regulations are enforced under a penalty of 20*l.* (4 Ann, c. 14.)

Churchwardens have the care of a benefice during its vacancy. Having first taken out what is termed a sequestration (see *Glossary*) from the Spiritual Court, it is their duty to manage all the profits and

expenses of the benefice for him that shall next succeed to it; plough and sow his glebe; take in the crop; collect the tithes; thrash out and sell the corn; repair houses and fences; and the like. And they are bound to take care that, during such vacancy, the church be duly served by a curate approved by the Bishop, whom they are empowered to pay out of the profits of the benefice. (*Com. Par. Off.* 90.)

Churchwardens are also bound not to suffer strangers to preach without showing a licence of their qualification. (*Can.* 50.) They are to sign the certificates of the out-pensioners of Greenwich Hospital, residing within their parishes, with respect to their identity, &c. in order to the receiving of their pensions. (3 Geo. 3. c. 16.) They (and the overseers) on notice from a justice of the peace, shall prosecute all offenders against the *pawnbrokers' act*, at the expense of the parish (39 and 40 Geo. 3. c. 99. s. 28.) They shall join with the constable and surveyor of the highways in choosing and returning new surveyors (13 Geo. 3. c. 78.) Preserve and deliver over the population returns to their successors (1 Geo. 4. c. 94 s. 9.) Make out lists of persons qualified to serve on juries, affix them on the church door, and keep them for inspection. (6 Geo. 4. c. 50. s. 8 and 9.)

Miscellaneous duties.

By the Metropolitan Building Act, if a presentment be made by any jury duly constituted under the provisions thereof, that any house or building is in a ruinous condition, the court of mayor and aldermen within the city and liberties of London, or the *churchwardens or overseers of the parish or place if not in the city*, on notice of any such presentment being made, and on a copy thereof being laid before them, are authorized to cause, with all convenient speed, a proper board to be put up for the safety of passengers, and to give notice to the owner of the building, or in case no owner can be found, to affix it on the door or most notorious part of the building, *to repair or pull down such building*, as the case may require, *within fourteen days*; and if this be not complied with, upon proof on oath before the Lord Mayor in the city, or a justice of the peace elsewhere, of the notice having been so given or affixed, the

Duty of churchwardens, &c. as to ruinous buildings.

mayor, &c. in the city, or the churchwardens, &c. elsewhere in the metropolis, may cause the necessary repairs, &c. to be executed, or the premises to be taken down, at the expense of the parish funds, and may reimburse themselves and the parish from the materials, &c. accounting for the surplus to the owner of the premises; and if enough be not raised by such materials to refund the expenses in full, the owner must make good the deficiency to such churchwardens, &c. which, on neglect or refusal, may be levied by distress and sale of his goods; and if no owner can be found, then the person who shall next occupy the premises, or the site thereof, may deduct the same out of his rent. (14 Geo. 3. c. 78. s. 70, 71.)

The churchwardens, or the overseers, are also bound by various statutes to receive certain penalties; as for hawking spirituous liquors (9 Geo. 2. c. 23); for tippling and drunkenness on Sundays (4 Jac. 1. c. 5; 21 Jac. 1. c. 7.); for eating flesh on fish days (5 Eliz. c. 5); from the incumbent for not reading the common prayer once a month (13 and 14 Car. 2. c. 4. s. 7.); all of which statutes may be now said to be wholly obsolete in practice; as well as others not yet repealed, under which churchwardens may be required to act, but which are not worth enumerating.

Many other of the most important duties of churchwardens will be found under different heads in the course of this work; for which, in general, see the proper titles (in alphabetical order); but more particularly the titles of **BASTARDS, APPRENTICES, CHURCH, CHURCH RATES, CHURCHYARD, BURIAL, PEWS, &c.**

III. *The Churchwardens' Accounts; Remedies against them for misbehaviour, &c.*

Churchwardens, when and to whom to account.

By the 89th canon, churchwardens are enjoined, at the end of their year's service, or within a month after at the utmost, to give in to the minister and parishioners, at a vestry to be holden for that purpose, (though this mode is frequently varied by the customs of different parishes,) a just account of all monies they have received and expended for the use

of the church during the tenure of their office, and also to deliver up to the said parishioners the money and effects remaining in their hands. (*Gibs. c. 15; 2 Lut. 1207.*)

They are likewise, at the time of passing their accounts, to produce the goods of the church committed to their care, which it is proper should be called over and examined before the parishioners; they are then to be delivered over to their successors, by bill or inventory indented, together with the keys of the church, parish chest, &c. (*Shaw, 88.*) And if they are found to have wasted the goods of the church, they are accountable to their successors, either by citation before the bishop, or at common law. (*Williams's P. L. 493; 1 Roll. Abr. 121.*)

On their producing sufficient vouchers for their disbursements, their accounts are allowed, usually by entering them in the parish account-book, and having them there signed by the parishioners present. (*Ibid. 490; Barl. 105.*)

How accounts allowed.

The oath of the churchwardens is generally held sufficient with respect to all items in their accounts under forty shillings, unless they are suspected to be unfair; but the payment of larger sums must be verified by receipts and vouchers; and if required, witnesses should also be produced, who should subscribe their names to the vouchers, &c. in proof of their authenticity. (*Prideaux's Directions; Barlow, 105.*)

Vouchers necessary, &c.

Churchwardens being esteemed bailiffs of the parish, and not mere receivers, they are allowed all reasonable expenses which they may incur about the parish business. (*1 Mod. 23.*)

Reasonable expenses to be allowed them.

If the custom of a parish is for a certain number of persons (or select vestry, as it is termed,) to have the government thereof, and the account of the churchwardens is given up to them, the custom is a good custom, and the account given to them a good account. (*Gibs. 242.*)

Accounting to a select vestry.

If churchwardens have disbursed in repairs, or by order of vestry, more than they have received, their successors may pay them the balance due to them,

Reimbursements.

and place the same to the account of the parish (1 *Rolls Abr.* 121; *Can.* 89, 109, &c.) And the Court of Chancery will, on application, make an order for the purpose. (*Chanc. Prec.* 43; 2 *Vern.* 262; 2 *Eq. Abr.* 203; 2 *Barn. & Cres.* 271.)

In general, however, churchwardens cannot claim reimbursement from their successors for a rate; for the money for such rate should be raised by them before paid, in order that it should fall, as it ought, on the existing inhabitants at the time. (12 *East*, 556; 5 *Ves.* 547; 8 *Taunt.* 201.) In a case, therefore, in which twenty parishioners had joined at a vestry in signing an order for the repairs of the church, and one of them, a churchwarden, paid the men employed, the rate for re-imbursing him was refused by the Court of King's Bench. (*Lanchester v. Frewer*, 2 *Bing.* 261.) And it seems also, that if churchwardens, having neglected to make a rate, are called upon to pay monies in consequence of some personal engagement to which they have rendered themselves liable, they cannot sue any of the parishioners who concurred in the orders of vestry for the making of the rate. (1 *Bing.* 202.) And a court of equity will not decree a church rate to be made, to reimburse a former churchwarden monies laid out while in office, though in pursuance of an order of vestry. (*Lanchester v. Thompson and others*, 5 *Madd.* 64.)

The only occasions on which churchwardens should advance money for parochial purposes.

Churchwardens, therefore, should on no occasion, except for the *immediate relief of the poor*, in their capacity of overseers, when there is *no rate*, or *during an appeal*, (41 *Geo. 3. c. 23. s. 9.*) *advance their own money for parochial purposes*; but should take care that such purposes are provided for by a *previous rate*, duly made; as such rate cannot legally be imposed afterwards to *reimburse* them. Nor can a mandamus to authorize them to make a rate be granted. (*Rex. v. Wilson*, 5 *Dowl. & Ry.* 602, quoted in *Steer's Parish Law.*)

Inspection of their accounts.

Churchwardens are bound, in common with the overseers, to permit *an inspection of their accounts*; and on any parishioner's stating some *special reason*

on account of which he wishes to see them, a mandamus to allow such inspection will be granted; to which it will be no answer that the 17 Geo. 2. c. 38. imposes a penalty for improperly refusing such inspection, (or in other words the alternative is not allowed to them of either allowing the inspection, or paying the penalty: they are bound peremptorily to allow the inspection.) 4 Barn. & Cres. 899; 8 Dowl. & Ryl. 393.

If churchwardens refuse to account, they may be presented to the Ordinary, at the next visitation, by the new churchwardens; or any of the parishioners may, by proof, summon them to account before the Ordinary; or the succeeding churchwardens may have a writ of account at common law. (1 Roll's Abr. 121.) And succeeding churchwardens, admitted and sworn into the office, even though not duly appointed, and though not the immediate successors of the defendants, may maintain such an action for money received by former churchwardens to the use of the parish. (Turner v. Barnes, 2 H. Black. 559; Astle v. Thomas, 2 Barn. & Cres. 271.)

How churchwardens may be compelled to account.

But the *Spiritual Court* has no jurisdiction in settling the accounts of the churchwardens. All the Ordinary can do, therefore, is to compel them to give in an account, to be submitted to the parishioners. (2 Stra. 974, 1133; 1 Keb. 574; 3 Term. Rep. 3.) If, however, any fraud appear in their accounts, it is said the Ordinary has power to punish them for breach of trust (Shaw, 86); though in what manner it does not appear.

Jurisdiction of the Spiritual Court.

When they have faithfully accounted, and their account has been allowed by the minister and a majority of the parishioners in vestry assembled, it shall not afterwards be in the power of any to make them account again, unless some fraud in their accounts be subsequently discovered. (Wood's Inst. b. 1. c. 7.)

Having once passed their accounts, cannot again be called on, except for fraud.

In case of misbehaviour, churchwardens may be removed by the parishioners, and others chosen in their stead, before the year expires (Lamb. s. 3; 13 Coke, 70.); or they may be sued for neglect, or

Proceedings against, for misbehaviour, &c.

breach of duty, in the ecclesiastical court. (1 *Sid.* 281.) And if they have wasted the goods of the church, the new churchwardens may call them to an account before the Bishop, or bring their action at common law. (*Read's Church Service.*) So, an indictment will lie against them, if, *with corrupt motives*, they have received money by virtue of their office of which they have given no account. (*Rex v. Eyres*, 1 *Sid.* 307); but they cannot be sued by their successors, for any thing *honestly* done by them by reason and in execution of their office (*Godb.* 279); neither are they answerable for *indiscretion*, but for *déceit* only, if they lay out more money than is needful. (*Wood's Inst.* b. 1. c. 7.)

If a churchwarden be committed for not accounting as *overseer*, he must be committed (and the mittimus must be worded accordingly) in that character; for the justices have no power over him as churchwarden. (1 *Keb.* 574.)

Penalty for paying poor otherwise than in lawful coin.

Churchwardens, for paying the poor otherwise than in lawful money, are to forfeit to the poor for every offence not less than 10*s.* nor more than 20*s.* (9 *Geo.* 3. c. 37.)

Churches, &c. Burning.

Maliciously setting fire to churches, felony and death.

By the 7 & 8 *Geo.* 4. c. 30. s. 2. it is enacted, that "if any person shall unlawfully and maliciously *set fire* to any church or chapel, or to any chapel for the religious worship of persons dissenting from the united church of England and Ireland, duly registered and recorded, such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon.

Riotously assembling to demolish, equally felonious and capital.

The 8th sect. enacts the same punishment against persons riotously assembled, who shall *demolish*, or *begin to demolish*, any such place of public worship.

CHURCH WAYS,—see CHURCHWARDENS.

CLERK OF THE PARISH,—see PARISH CLERK.

Clergymen.

By the 9 Geo. 4. c. 31. s. 23. it is enacted, that if any person shall *arrest* any clergyman upon any *civil process* while he shall be *performing divine service*, or at a time when such person knows he is *going* to perform the same, or *returning* from its performance, every such offender shall be guilty of a misdemeanour, and on conviction, shall suffer fine or imprisonment, or both, as the court shall award.

9 Geo. 4. c. 31.
Clergyman, while performing divine service, or going, &c. not to be arrested on civil process.

This statute does not exempt clergymen from arrest in *criminal* cases; but, as regards civil process, the act is deemed to apply to week-days, as well as to Sundays and holidays.

Act not applicable to criminal cases.

Clergymen are in general liable to all public charges imposed by act of parliament, unless expressly exempted. (1 *Hawk.* c. 76. s. 15.)

Liable to public charges.

They are also liable to the poor rates and highway rates, for their *tithes*, &c. (1 *Hawk.* c. 76. 13 Geo. 3. c. 78.)

Poor and Highway Rates.

But they are exempted, under certain circumstances, from the duty on horses; from serving the office of bailiff, constable, &c.; from serving in war; as jurors, &c.

Exempted from serving certain offices.

See CURATE, and MINISTER.

COMPOSITIONS FOR ASSESSED TAXES.—See ASSESSED TAXES.

COMMUNION TABLE, &c.—See CHURCHWARDENS.

Constable.

Constables may now be said to be of five kinds; viz. *high* constables, *petty* or parish constables, *special* constables, *street* constables, and *new police* constables.

Constables of several kinds.

The office of high constable extends generally over a hundred, or other large division of a county, and is of much higher dignity than that of petty constable, whose duties are confined to the particular parish, borough, or liberty only, for which he is chosen.

High Constable.

His election,
duties and
powers.

The high constable is elected at the leet or torn of the hundred, or by justices of the peace. (1 *Roll's Ab.* 545.) But there may be a custom for the sheriff or lord to nominate as well as to appoint him (4 *Barn. & Cress.* 779); and in Westminster, the high constable is elected annually by the Dean, or High Steward, or their deputies, at a court leet. His duties are, to deliver lists of persons qualified to serve on juries (6 Geo. 4. c. 50.); to defend actions against the hundred by persons robbed (8 Geo. 2. c. 16.); to collect the county rate (12 Geo. 2. c. 29); to give notice to the petty constable of the orders of the Lieutenant, or his deputy, as to the militia (see MILITIA); &c. &c.

The high constable is removeable by justices on good cause (1 *Salk.* 150); and in virtue of his office, he is discharged, during its continuance, from serving as collector of the poor rates.

Petty, or
Parish Con-
stable

The constable of the vill, or parish, or *petty constable*, as he is frequently called, to distinguish him from the high constable, is he who is generally understood by the term "constable," when used without any addition. In considering the powers and duties of this important officer, we shall proceed in the following order :

I. *His quality and qualifications.*

II. *Who may be elected as constable, and who exempted from the office, with the mode of election, &c.*

III. *His duties and powers.*

IV. *His protection, indemnity, expenses, and allowances.*

V. *His responsibility and punishment.*

I. *His quality and qualifications.*

Nature, &c.
of office.

The constable was ordained to *repress felons and to keep the peace.* (4 *Inst.* 265.)

His office is, therefore, first, original or primitive, as conservator of the peace; and secondly, ministerial, and relative to justices of the peace, coroners, sheriffs, &c. whose precepts he is to execute. (1 *Hale, P. C.* 88.)

The duty of a constable is to prevent offences

against the laws, to detect and apprehend offenders, and generally, to preserve the peace of the district in which he officiates. For these purposes he is armed by law with very formidable powers, to the extent, in many cases, of arresting and imprisoning his fellow-subjects, and of forcibly entering their dwellings.

The constable is the proper officer of the justice of the peace, and bound to execute his warrants; and therefore, where a justice is authorized by the legislature to convict a man of any offence, and to levy the penalty by warrant of distress, the constable is always understood to be the proper officer to serve the warrant, and he may be indicted for disobedience. (1 *Salk.* 175; 5 *Mod.* 130, 446, &c.)

It is also the duty of the constable to attend on coroners, in order to execute their warrants, as well as on the justices of assize at the gaol delivery, and justices at general and special sessions, for the like purpose. (2 *Hale*, P. C. 59; *Comp.* 34.)

The common law requires that every constable shall be *idoneus homo*, i. e. a fit and proper man for the execution of the office; and "he only is said to be *idoneus*, who has these three things—honesty, knowledge, and ability: honesty to execute his office truly, without malice, affection, or partiality; knowledge, to know what he ought duly to do; and ability, as well in estate as body, that he may execute his office diligently, and not, from impotence or poverty, neglect it." (8 *Rep.* 41.)

He must be an *inhabitant* of the place for which he is chosen. His qualification.

By 1 Will. and Mary, st. 1. c. 18. if any *dissenter* from the church of England be chosen to the office of constable, and shall scruple in conscience to take upon him the office, on account of the oaths to be taken, or for any other cause, it shall be lawful for him to provide a substitute. Must be an inhabitant.
Dissenters may provide substitute.

And *women*, when chosen to the office, (which they are liable to be) have the same privilege. And women.

And indeed, as the office of constable is wholly *ministerial*, it seems that he may in all cases appoint Deputy may be appointed on special cause.

a deputy to execute all warrants directed to him, if prevented, by sickness, absence, or other sufficient cause, from executing them himself. (2 *Hawk*, P. C. c. 10.)

Liability of
principal and
deputy.

But the superior must be answerable for his deputy, unless the latter be duly allowed and sworn, (*Wood's Inst.* b. 1. c. 7;) after which the liability of the principal ceases, even though the deputy abscond. (*Underhill v. Witts*, 3 *Esp. N. P. Rep.* 56.)

II. Who may be elected as constable; who exempted; mode of election, &c.

Who may be
elected as
constable.
Must be a
resident.

In general, every inhabitant housekeeper, *resident* within the parish, of full age, and not subject to any legal disability, is liable to be called on to serve the office of constable. But no one is so liable who is not actually a *resident* within the hundred, or the precinct for which he is appointed. Thus a party who occupied a house for the purpose of trade, for which he paid parish rates, but did not sleep within it, was held *not* to be an inhabitant liable to serve the office of constable. (4 *Barn & Cres.* 772.) The office, it was ruled, required personal attendance within the district, and therefore the person selected should be *resident* within it, and well known to the inhabitants. (*Ibid.* 778.) And if there be a parish, and a leet within that parish, not equally extensive with it, a resident in the parish cannot be appointed constable of the leet, unless he reside in that part of the parish which is within the leet. (*Ibid.* 777.)

Improper
person may
be removed.

But though, as a general rule, every housekeeper is liable to serve, yet the person elected ought to be of a respectable grade in society, and of competent ability, as being more likely to execute his duty with probity and discretion. (8 *Coke*, 42.) And therefore, if any improper person be chosen, he may, upon application by the inhabitants, be removed by two justices, and another appointed in his stead. (*Ibid.*)

If, by custom, the inhabitants of a town serve the office of constable by rotation, according to the situation of their houses, and it come to the turn of a

woman so to serve, it seems that she is bound to find a substitute. (2 *Term Rep.* 406; 2 *Hawk.* 10. 37.)

The exceptions to the general rule that all resident housekeepers are liable to serve, are as follow : Who exempted from the office.

Aged persons, incapacitated by weakness. In Westminster persons 63 years old, are expressly exempted by 31 Geo. 2. c. 17. And in most other parishes the fact of being 60 years of age, or upwards, is allowed as a good ground of exemption. Aged persons.

Persons specially exempted by the King. (1 *Term Rep.* 682.) Persons exempted by the King.

The President of the commonalty and fellowship of the science of Physic in *London*, and the commons and fellows thereof, are exempted from being elected to the office of constable *within the city of London, and its suburbs* (32 Hen. 2. c. 4.); but it seems extremely doubtful whether a *practising physician* in any other place would obtain his discharge, especially if chosen in pursuance of a custom that each inhabitant should serve in rotation. The calling is private, and there are no precedents to justify the exemption. (2 *Hawk.* c. 10. s. 41.) Yet it seems the opinion, that if a practising physician be chosen constable of a town in which there are sufficient other persons to execute the office, he would obtain relief by application to the Court of King's Bench. (1 *Keb.* 439; 2 *ibid.* 478.) Physicians.

With respect to surgeons, by 5 Hen. 8. c. 6. the wardens and fellowship of surgeons enfranchised in the city of *London*, and all barber-surgeons, not exceeding the number of twelve, duly admitted and approved, shall be discharged of the office of constable; and by 18 Geo. 2. c. 15. all freemen of the corporation of surgeons, as long as they shall exercise the art or science of surgery, shall be exempted from serving the said office; by the equity of which statutes, it is held, that *all* surgeons are exempted. (*Rex v. Pond*, Com. 312.) Though, in a later case, it was decided, that a member of the barber's company, in the city of *London*, was *not* exempted from the office of constable. (See *Rex v. Chapple*, 3 *Camp.* Surgeons.

91.) By the custom of the realm, however, as well as by virtue of the statutes before quoted, it would seem that, in general, all surgeons are discharged from the constable's duties, as well as from all other parish offices, and from serving on juries.

Apothecaries.

So, likewise, by 6 and 7 Will. 3. c. 4. freemen of the company of apothecaries in *London*, and within seven miles thereof, and also all persons using the art of apothecary *elsewhere*, who have duly served an apprenticeship therein according to the statute of 5 Eliz., are exempted from serving the office of constable, so long as they shall exercise the said art.

Foreigners.

By 12 Will. 3. c. 2. and 1 Geo. 1. c. 4. no person born out of the kingdom of England, Scotland, or Ireland, or the dominions thereof, (unless born of English parents) shall be capable of serving *any* office of trust, *civil* or military, even though he be naturalized or denizenized; on which statute it has been adjudged that all such persons are ineligible to the office of constable, the same being a *civil office of trust*. (5 *Burr.* 2790.)

Attorneys.

If a sworn attorney, or other officer of the courts of Westminster, be chosen into the office, he may have a writ of privilege for his discharge, by reason of his attendance being necessary in those courts; and as no custom can be taken to be more ancient than the usages of those courts, whether such attorney be elected to the office by special or particular custom, in respect of his estate or otherwise, his privilege may be enforced, and the custom must yield. (2 *Hawk.* c. 10. s. 39.)

Barristers,
and Servants
of Members
of Parlia-
ment.
Aldermen.
College offi-
cers.

For the same reasons, practising barristers-at-law, and the servants of members of parliament, have the same privilege. (*Ibid.*)

So, also, have aldermen of London. (*Ibid.* s. 40.)

The ancient officer of any of the constables in the two Universities are exempted from the office. (*Doug.* 531.)

Publicans.

No man who keeps a public-house ought to be a constable (6 *Mod.* 42); and by 3 Geo. 4. c. 77. ale-house keepers are disqualified.

Militia-men.

No serjeant, corporal, drummer, nor private, serv-

ing in the militia, shall, during such service, be liable to bear the office of constable. (42 Geo. 3. c. 90.)

Neither shall the officers, non-commissioned officers, or effective members, of any yeomanry corps or volunteer cavalry, be compelled to serve the office. (57 Geo. 3. c. 44.) Yeomanry.

And by 1 Will. & Mary, c. 11. teachers or preachers in holy orders, and teachers, preachers, and ministers of any congregation, who shall take the oaths, and make and subscribe the declaration which the act requires, shall be exempt from all parochial offices. Ministers of the Gospel.

And every teacher or preacher in any congregation, or assembly for religious worship, of protestants, who shall employ himself solely in the duties of such teacher, &c. and not follow any trade or other employment for his livelihood, except that of a schoolmaster, and who shall produce a justice's certificate of his having taken and subscribed the oaths and declaration prescribed by stat. 19 Geo. 3. c. 44. shall be exempt from the civil services and offices specified in 1 Will. 3. c. 18, and among the rest from the office of constable. Protestant teachers and preachers.

Persons holding public offices which require their daily personal attendance, are exempted; but not if their duty is of a ministerial kind only, and may be performed by deputy. (*Esp. N. P. C.* 359.) Public officers.

The exemption which formerly existed in favour of the prosecutors of felons to conviction, or the original proprietors of a certificate, (vulgarly called a Tyburn ticket,) no longer prevails—the statutes of 58 Geo. 3. c. 70. and 10 & 11 Will. 3. c. 23. having been repealed by 7 Geo. 4. c. 64. and 7 & 8 Geo. 4. c. 27. Prosecutors of felons, not exempted.

It should seem, also, that masters of arts are not exempted (5 *Vin. Abr.* 429); neither are officers or watchmen in the customs (1 *Sid.* 272); nor a younger brother of the Trinity House (1 *Term Rep.* 679); notwithstanding the charters of that fraternity. Yet, if such officers as above-mentioned, or a gentleman of quality, be chosen constable of a town Masters of Arts, &c. not exempted.

in which there are sufficient other persons to execute the office, it is *thought* that the King's Bench would afford relief. (2 *Hawk.* c. 10. s. 41.)

Constables,
how chosen.

Anciently, both high and petty constables, where there was a feudal lord, were chosen by such lord, his steward, or suitors, in the *leet*; or, where there was no feudal lord, it was done by the sheriff in his *torn*. (1 *Bac. Abr.* 439.)

Election of
High Constable.

The High Constable is now usually chosen by a majority of the justices of the division in which the hundred lies, or by the county justices in their quarter sessions. (*Dalton.*)

Election of
Petty Constable.

The petty constable is appointed for a vill, township, or tithing, and not for a parish, and the number in each depends upon the custom of the place. (12 *Mod.* 180; 1 *Mod.* 13.) He is elected by the jury, and appointed by the lord or steward of the court leet of the manor in which his precinct lies; though there may be a custom for the officer of the leet to appoint, without any election by the jury. (*Doug.* 537.) And it being settled that his election is in the people, it is customary in many parishes for the inhabitants to elect their officer in vestry, who is afterwards sworn in before a justice of the peace.

Power of Jus-
tices in their
appointment.

But as a constable is a principal officer of the peace, the justices of the peace have, ever since the institution of their office, taken upon them to nominate and swear in constables, whenever they have been neglected to be appointed by the leet. It seems, also, that their power extends to the appointment of constables even in privileged places, and where there have been none for fifty years before; as, in the Tower Hamlets, they chose five, where there had formerly been but one, and it was determined that the appointment so made by them was valid, for justices may choose them *in all cases of necessity*. (1 *Bac. Abr.* 139; *Hawk. P. C.* c. 10.)

And not only where the leet has neglected to elect a constable, but in all cases where unable or unfit persons have been chosen, the justices of the peace are empowered to interfere, and, in the latter case, to remove them. (*Dalt.* c. 28.)

In like manner, if a constable die during his office, or remove out of the parish, and the time for holding the leet be distant, his place may be filled by the justices at the sessions, or if they be not at hand, then by the neighbouring justice of the peace. (13 and 14 Car. 2. c. 12.)

Constables of the *city of London*, (which is divided into twenty-six wards, and every ward into precincts, in each whereof is a constable,) are nominated annually, by the inhabitants of each precinct, on St. Thomas's Day, and confirmed, or otherwise, at the court of ward-mote; and after being confirmed, they are sworn into their offices at a court of aldermen, on the next Monday after Twelfth Day. Their oath is long and particular, and relates to duties regulated by articles of the wardmote inquest.

Constables of the city of London.

There are also *night* constables in the city of London. They are appointed annually by the Court of Common Council, on the 1st October.

If the constable be in court at the time of his election, he ought to be sworn immediately; otherwise the steward of the court must issue a precept commanding him to take the oath before one of his Majesty's justices of the peace. (1 *Ld. Raym.* 70.)

How Constable should be sworn.

The High Constable is compellable, under 1 Geo. 1. st. 2. c. 13. to take the oaths of allegiance and supremacy. With respect, however, to the petty constable, this is not required; neither is there any prescribed form of oath; that usually administered being merely to the effect that he will serve the King faithfully by executing his office to the best of his skill and knowledge.

Oath of High Constable.

Oath of Petty Constable.

If the constable, being present, refuse to be sworn, he may be fined; or if, having notice of his election from the steward of the leet, he neglect or refuse to be sworn before a justice, he may be fined at the next leet, or indicted. (*Ld. Raym.* 69. 138.)

Penalty for refusing to be sworn.

III. Duties and Powers of the Constable.

In the city of *London*, the general duties of constables (as specified in their oath) is to keep the

Duties of constables in

the city of
London.

King's peace to the utmost of their power, and to arrest affrayers, rioters, and breakers of the peace, whom they are to carry to the house of correction, or the compters of one of the sheriffs; and in case of resistance or escape, to make outcry upon them, and pursue them from street to street, and from ward to ward, till they are taken; to search for common nuisances in their respective wards; to assist the beadle and raker in collecting their salaries and quarterage; to present to the Lord Mayor and ministers of the city all defaults relating to the city ordinances; to certify monthly into the Mayor's court the christian and surnames of all freemen deceased, and also of the children of such freemen, together with the christian and surnames, place of abode, profession, or trade, of all persons who shall newly have become inhabitants within their respective precincts, and keep a roll thereof; for which purpose they are to make inquiries, at least once a month, as to what persons are come to lodge or sojourn there; and if they find that there are any new comers who were sent from any other ward for bad living, or any misdemeanour, they shall require them to give sureties for their good behaviour, and if this be refused, warning is to be given them and their landlords that they depart; on refusal whereof they may be imprisoned, and their landlords fined a year's rent of the house or apartments they inhabited. (*Calth. Rep.* 129. 138.) They are also to certify to the Lord Mayor and Common Council the names of all such persons as shall interrupt them in the discharge of their duty (10 Geo. 2. c. 22); and they are to place the king's arms and those of the city over their doors, or if they reside in a court, at the end of such court, that it may be known where a constable is to be found, if wanted.

Duties of
constables
generally.

The duties of constables in general, so far as they are not noticed under separate heads in other parts of this work, may be here classed, for convenience of reference, in alphabetical order, as follows:

In affrays.

AFFRAY—If a constable *see* one making affray (see that title), or assaulting another, or breaking

the peace, or *hear* or *know* one to menace or threaten to kill, wound, maim, or beat another, he may either carry the offender before a justice, or imprison him of his own authority for a reasonable time, until his heat be over, and afterwards detain him till he find sureties to keep the peace, (*Dalt.* 33 ; *Lamb.* 135) ; or till he can take him before a magistrate. And he is not merely authorized to suppress any affray or disturbance which may happen in his presence, but he is bound, at his peril, to use his utmost endeavours to that purpose, not only by his own exertions, but by commanding the assistance of the by-standers, which they are compellable, under pain of fine and imprisonment, to afford him. (3 *Inst.* 158 ; *Dalt.* c. 8.) But he ought not to meddle with persons using but words only to one another, any further than by cautioning them, under pain of imprisonment, to avoid violence. (2 *Hawk. P. C.* 23.)

If an affray take place within a house, the constable is empowered to break open the door to preserve the peace ; or if persons, having committed an affray, fly to a house for shelter, he may follow them thither, and apprehend them. (2 *Hawk. P. C.* 81.) But, except in cases of felony actually, or likely to be, committed, he cannot apprehend any one for an affray which he did not *personally witness*, without a warrant from a justice. (*Espin.* 540.)

ALEHOUSES.—Constables are to enforce the penalties against the keepers of alehouses, &c. for disorders, or irregularity, in their houses. If there be disorderly drinking or noise, at an unseasonable time of night, in any house, but especially in inns, taverns, or alehouses, the constable, after having demanded entrance and been refused, may break open the doors to see and suppress the disorder ; as is constantly done in London and Middlesex. (2 *Hale, P. C.* 95.)

APPRENTICES—see that title.

Apprentices.

ARRESTS.—A constable is empowered, for any breach of the peace, and also for felonies, as well as for some misdemeanours, to arrest and imprison the offenders. Thus, if a person leave an infant in the

Arrests.

Offences generally, for which a con-

stable may
arrest.

cold, with intent to destroy it, or with the view of charging the parish with its maintenance, the constable may arrest the offender. (*Moore*, 284.)

He may likewise apprehend persons *riding armed*, contrary to the stat. 2 Edw. 3. c. 3.

Also, all suspicious night-walkers (2 Edw. 3. c. 14); but he must have reasonable cause for suspicion before he apprehend them; for it is not the mere suspicion of a constable that will justify his depriving another of liberty, but there must be *just grounds* of suspicion. (2 *Lord Raym.* 1301.)

By 32 Geo. 3. c. 53. s. 17. any constable may apprehend suspected persons, or reputed thieves, and carry them before a justice.

Cases of fe-
lony.

In cases of felony, a constable may arrest and imprison the offender, until he can conveniently be conveyed before a justice, or to gaol, whether the felony be committed in the same, or in any other village, town, or county, so that the felon be within the precinct of which he is constable. And if the felon resist, or if, being taken, he strive to escape, it is not felony in the constable, but justifiable homicide, if he shoot, or otherwise kill him, in order to prevent his escape; though, if the constable, or any of his assistants, be killed, (after notice that they are such,) it is murder. (*Williams's Justice.*)

If a felon, *before* he is arrested, fly into another county, he must be taken before a justice, or to the gaol, of the county in which he is apprehended; but if he be once arrested, and afterwards escape into another county, if retaken in immediate pursuit, he may be brought back to the justice or gaol of the county from which he fled. (*Cald.* 291.)

Offences for
which, under
Peel's Acts,
arrests may
be made
without a
warrant.

In the discharge of the very important duty entrusted to constables respecting arrests, the 7 & 8 Geo. 4. c. 29. and the 7 & 8 Geo. 4. c. 30. (Sir R. Peel's Acts) afford great facilities, by enumerating the offences for which arrest may be made without a warrant, by any peace officer, or the owner of property injured, or his servant, or other person authorized by him.

Thus, any person to whom any property is offered

to be sold, pawned, &c. having reasonable cause to suspect that it has not been honestly acquired, &c., may apprehend the party offering the same, and carry him before a justice. The other offences enumerated in the Acts above-mentioned, are as follow :

Stealing securities for money, or warrants for goods ; robbing, or stealing from the person ; assaulting with intent to rob ; demanding property with menaces or force ; obtaining property by threatening to accuse of an infamous crime ; sending letters containing menacing demands, or with a like threat ; sacrilege ; burglary ; housebreaking and stealing in a house ; robbery in a building adjoining, or a shop, or warehouse, &c. ; stealing silk, &c. in process of manufacture ; stealing goods in a vessel, &c. in any port, river, &c. ; plundering a vessel wrecked, &c. ; unlawfully possessing shipwrecked goods ; offering the same for sale ; stealing records, &c. of a court of law or equity ; stealing, concealing, &c. wills ; stealing writings relating to real estate ; horses, cows, or sheep ; deer ; possessing part of a stolen deer, or snares, &c. ; setting engines for taking deer, or pulling down park fences ; resisting keepers on duty ; killing hares or conies in a warren, &c. ; stealing dogs, or domestic beasts or birds ; unlawfully possessing them, or their skins, &c. ; unlawfully killing pigeons ; unlawfully taking fish in private property, in the night or day-time, except by angling ; stealing, or dredging for, oysters or their brood, in a private bed ; stealing ore, or produce of any mine ; stealing, or destroying trees, shrubs, &c. ; stealing or destroying live or dead fence, &c., or possessing the same ; stealing fruit or vegetables ; glass, wood-work, metal-work, fixtures, &c. ; stealing by tenants or lodgers of any property let to them with their houses or apartments ; by clerks and servants, of their masters' property, or of money received on their account ; by agents, of money, goods, or valuable securities, entrusted to them for safe custody, or any specific purpose ; pledging by factors of goods or documents, entrusted to them for sale, for more than the amount of their lien ; obtaining money on

7 and 8 Geo.
4. c. 29.

false pretences; knowingly receiving stolen property; taking a reward for assisting in the recovery of stolen property, without bringing the offender to justice; advertising a reward for the return of stolen property, with impunity to the offender; being accessory to a felony, or abetting a misdemeanour, or any other offence named in the Act. (7 and 8 Geo. 4. c. 29.)

7 and 8 Geo. 4.
c. 30.

And by the 7 and 8 Geo. 4. c. 30. (for malicious injuries to property) the following are the offences enumerated; setting fire to a church, chapel, house, or other building; destroying silk, woollen, &c. in the loom, or the machinery for manufacturing them, or threshing machines; firing coal mines, drowning or filling in mines, shafts, &c. with intent to destroy them; destroying mine engines, &c.; firing, destroying, or damaging, any ship; exhibiting false lights to destroy a ship; destroying or damaging any sea-bank, or works, on a river, or canal, or obstructing the navigation thereof; destroying or injuring a public bridge, a turnpike-gate, or toll-house; breaking down the dam of a mill or fishery; killing or maiming cattle; firing stacks, or crops of corn, &c.; destroying hop-binds, trees, shrubs, &c.; or fences, walls, stiles, &c.; or committing any other *malicious* injury (which is essential to constitute an offence under the Act) to property, aiding or abetting therein.

At what
times arrests
may be made.

An arrest may be made as well in the night as in the day-time, whether at the suit of the king, or of a private person; for otherwise the offender might escape. (9 Co. 66.)

Mode of
executing
warrant.

If a warrant be directed generally to all constables, no one can execute it out of his own district; but if directed to a particular constable, he is empowered to make arrest under it at any place within the jurisdiction of the justice by whom it was granted. (1 Salk. 176; Lord Raym. 546.) So also by stat. 5 Geo. 4. c. 18. constables are authorized to execute warrants out of their own precincts, so as it be within the jurisdiction of the justices who grant or *back* them.

Any one constable may execute a warrant singly, though directed to two or more. (*Will. Just.* 206.)

The proper mode of arrest is by laying hold of, or touching, the offender; and no other mode is strictly legal (6 *Mod.* 173); though, on an occasion on which a constable found the party in a room, of which he locked the door, the arrest was held good, the offender being deemed in the custody of the officer. (*Ca. T. Hard.* 301.)

The proper mode of arrest.

A sworn constable, being presumed to be a well-known officer, is not obliged, within his own precinct, to exhibit his warrant on demand; but if not sworn, or if acting out of his precinct, he must produce his warrant, if required; and it is always desirable that he should acquaint the accused with its substance, and the cause of the arrest. (6 *Co.* 54; 9 *Ib.* 69; 3 *Haw. P. C.* 182.)

Constable, within his own precinct, not obliged to exhibit his warrant; but otherwise, if, &c.

In warrants of distress issued by any justice, for any statutory penalty, the officer executing the same is bound, if required, to exhibit his warrant, and to allow the party distrained on to take a copy thereof. (27 *Geo.* 2. c. 20.)

And must always be exhibited in warrants of distress.

Constables should be extremely careful to execute a warrant against the right party: for if any mistake be made by them, they will be subject to an action on the part of any person wrongly arrested. (3 *Burr.* 1742; *State Trials*, 307, 312, 321.)

Warrant must be cautiously executed against the right party.

A constable cannot justify arresting another, under warrant on the face of which it evidently appears to be for an offence over which the justice who granted it has no jurisdiction, or which contains directions to bring the accused before him at a place out of the county. (*Haw. P. C.* 175.) But he may execute a general warrant to bring a person before the justice to answer such matters as may be alleged against him on the part of the king, (6 *Term Rep.*) though not if it be to search for felons, stolen goods, &c. (3 *Hawk. P. C.* 175.)

Decisions as to execution of warrant in certain cases.

And if the justice hath jurisdiction, even though he exceed his authority, yet the officer cannot dispute his warrant (*Dalt.* 579); nor is the guilt or innocence of a felon against whom a warrant is directed

Constables cannot question the warrant of a justice having jurisdiction;

Nor the propriety of the justice's proceedings.

to be considered by the officer, even though he know that no felony hath been committed; it is the officer's duty to obey the warrant, whatever may be the consequences to the justice who granted it. The warrant is his indemnity. (*Stra.* 1002; *Black. Comm.* 291.)

What a constable is to do with his prisoner, if arrested by him of his own authority.

When a constable hath made an arrest for an offence for which he is authorized to arrest, he must carry his prisoner to the sheriff of the county, or his gaoler, or if within a franchise, to the gaoler thereof; but the most usual and the best way, is to bring him before a justice, by whom he may be bailed or committed, as the case may require; but if the arrest be made by virtue of a warrant, the prisoner is to be taken before a justice, or otherwise, as the warrant directs; and if it direct that he shall be taken, not before the justice in particular who granted it, but before any justice of the county, it is at the option of the officer to take him before whichever justice he may think fit, and not at the election of the prisoner.

What, if arrested by virtue of a warrant.

BASTARDS—see that title.

Bastards.
Bawdy houses.

BAWDY HOUSES.—If information be given to a constable, that a man and woman are committing adultery or fornication in a house of ill fame, he may proceed thither and search the house, and if he find any such persons, he may carry them before a justice, to find securities for their good behaviour.

Breaking open doors.

BREAKING OPEN DOORS.—It is only in cases of absolute necessity, that the extremity of breaking open any place of habitation for the purpose of securing an offender, is permitted. It is therefore held, that no one, whether constable or other officer, can justify the breaking open another's door to make an arrest, without first acquainting him with the cause of his coming, and requesting admittance to be granted. It is also imperative, that every such officer should have a legal warrant; otherwise he will be deemed a trespasser. But if, having satisfied the party that he comes under a proper authority, he be then denied entrance, he may break open the doors and force an entry, in the following cases:

In what cases constable

I. Upon any writ of *capias* on an indictment, or

upon any *capias* or warrant of a justice to find sureties for good behaviour ; or on a *capias ut legatum*, or *capias pro fine*. (*Fost.* 136 ; *Moor*, 606 ; *Yelu.* 28.)

permitted to use force, if necessary.

II. Upon the warrant of a justice in execution of a judgment, or on conviction for a forfeiture under any statute giving the same, or any part thereof, to the king, and authorizing a justice to award the same. 2 *Jones*, 233.

III. Where it appears to the satisfaction of a justice, that a party has forcibly entered a house, or is forcibly detained therein. (3 *Haw. P. C.* 184.)

IV. In cases where a person, having committed a felony, or given another a dangerous wound, is immediately pursued, and takes refuge within a house. (*Ibid.*)

V. In certain cases of *Hue and Cry*—see that title, p. 135.

VI. In cases where a person, having been once arrested, effects an escape, and shelters himself within a house. (6 *Mod.* 103 ; *Salk.* 79.)

VII. In cases of affray, if made within a house in the view or hearing of a constable, or where affrayers fly to a house for shelter, and refuse admittance. (3 *Haw.* 184.)

VIII. If there be disorderly drinking, or noise, in a house, at an unseasonable time of night, (especially in inns, &c.) and admittance be refused. (2 *Hale H. C. L.* 95.)

And if an officer enter a house to execute a warrant, and the doors be locked on him, he may break them open to regain his liberty, even though it be under civil process only. (*Fost.* 319.) But in cases of civil suit, as for rent, debt, &c. an officer cannot justify breaking open an outer door, or a window, in order to execute any process ; though, if he find the outer door open, or it be opened to him, he may force an inner door for that purpose. This rule of law, however, is strictly limited to the outer door of a house, and does not apply to apartments ; and therefore, if an officer gain legal admittance to a house in which a person of whom he is in search lodges, he may justify breaking open the door of any of the

apartments to execute his process. (Fost. Crim. Law, 319 ; Cow. 1.)

- Bridges.** **BRIDGES.**—By stat. 2. Hen. 8. c. 5. it is the duty of the constable, if he find any common bridge going to decay, to summon two of the most able inhabitants of the parish, to make an assessment for its reparation, to be allowed by justices. (1 *Ham. P. C.*)
- Burglary.** **BURGLARY.**—If a constable receive notice that a burglary has been committed, it is his duty to pursue the felon immediately.
- County rate.** **COUNTY RATE.**—By 12 Geo. 2. c. 29. it is enacted, that “ in case no rate is levied in any parish, &c. the petty constable, or other peace officer, is to levy the county rate, under the direction of the quarter sessions, to be paid over by the petty constable to the high constable of the division.”
- Customs.** **CUSTOMS.**—Constables are bound by several statutes to be aiding and assisting to all persons appointed for the collection and management of the *customs*, as well as to persons having a warrant to make a search for goods that have not paid the customs.
- Distress.** **DISTRESS.**—Constables are to assist in cases of distress for rent, and to aid the landlord in distraining under the authority of a justice’s warrant, and thus authorized may break open doors, &c. are to administer an oath to the appraising brokers previously to the distress being valued, &c. See this Dictionary tit. **RENT.**
- Drunkenness.** **DRUNKENNESS and TIPPLING.**—To assist the justices in levying the fines imposed by 1 Jac. 1. c. 9. and 4 Jac. 1. c. 5.
- Felons.** **ESCAPE and FELONS.**—See **ARREST.**
- Excise.** **EXCISE.**—Constable to accompany officer of excise, on request, on any occasion in which he is required to do so by any statute ; and on refusal to forfeit 20*l.* to be levied by distress.
- Felons’ goods.** **FELONS’ GOODS.**—It is the duty of the constable to keep the goods, &c. found on a felon until his trial, when he is to dispose of them according to the directions of the court.
- Fires.** **FIRES.**—All constables to assist at, to prevent disorders, &c.

FISHING.—To assist in enforcing the statutes Fishing.
against unlawful fishing.

GAME ACTS.—To assist in enforcing.

Game Acts.

GAMING.—They may, on information, search Gaming.
houses where gaming is permitted.

HAWKERS.—By 8 and 9 Will. 3. c. 5. constables Hawkers and
are to assist in enforcing the laws against hawkers pedlars.
and pedlars travelling without licenses, and by 11
Geo. 2. c. 26. against hawkers or sellers of spirits
without a license.

HIGHWAYS.—See that title.

Highways.

HUE and CRY.—By stat. 13 Eliz. 1. st. 2. c. 6. Hue and cry.
27 Eliz. c. 13. and 8 Geo. 2. c. 16. it is enacted,
that every constable of any place or district wherein
any felony or robbery shall be committed, as soon as
the same shall come to his knowledge, either by no-
tice from the party robbed, or from any other person
to whom notice shall be given under the above sta-
tutes, shall, with the utmost expedition make fresh
suit (pursuit) and *hue and cry* after the offender,
under a penalty of 5*l.* and the liability to be indicted
at common law, fined, and imprisoned.

The regular mode of making hue and cry is, for
the party robbed to proceed to the constable of the
district, or next town, and describe the offender, and
the direction in which he is gone; whereupon the
constable is bound *immediately*, whether it be by day
or by night, to raise the parish, or as many thereof
as may be necessary, and make diligent search for
the offender; and if he do not find him, he is to send
with the utmost expedition to the constables of all
the neighbouring towns, who are in like manner to
make search, and also, if unsuccessful, to give the
like notice to their neighbouring constables, and they
to the next, and so on till the offender be found. (3
Hawk. P. C. 158.)

The constable is not empowered to examine into
the truth or falsehood of the allegation of his infor-
mant, for he cannot administer an oath to him; and
consequently he may pursue by *hue and cry* a per-
son charged with felony, though no such crime shall
really have been committed. (2 *Hale P. C.* 102.)

If a person pursued by hue and cry be in a house, the door of which is fastened, and admittance be refused on demand, he may, after notice of his business, break open the door to obtain admittance. (*Ibid.*)

In cases of hue and cry, the constable is authorized to search any suspected place within his vill, in order to apprehend the offender; but he cannot justify breaking open doors merely to search, without knowing whether he be there or not, though with certain knowledge that the offender is within, he lawfully may force admittance, after notice of his coming, a demand of admittance, and refusal thereof. (*Ibid.*)

In cases of hue and cry, if a general description of the stature, clothes, &c. of the supposed offender be given, the constable is authorized in apprehending one who answers to the description, whether guilty or not. (*Ibid.*)

Much latitude is allowed to the officer in all such cases, even so far as to authorize him (where the hue and cry is for felony) to apprehend all such persons as he may find probable cause to suspect, as those who cannot, or will not on demand, give a satisfactory account of themselves. (3 *Hawk. P. C.* 107.)

Juries.

JURIES.—Constables are by several old statutes bound to make annual returns of persons within their districts qualified to serve on juries; but now this duty seems to have devolved on the churchwardens and overseers, who, under 6 Geo. 4. c. 50. are required to make alphabetical lists of such persons before the 1st of September in each year. See **JURIES** in this Dictionary.

Militia.

MILITIA.—Constables are to return the lists of persons liable to serve in the militia, under the directions of the deputy-lieutenant of the county. See further, title **MILITIA**.

Night-walkers.

NIGHT WALKERS.—May arrest; see *ante*, p. 128.

Penalties.

PENALTIES.—Are directed by various old statutes to levy certain penalties under a justice's warrant.

Plague.

PLAGUE.—In time of, constables may compel infected persons to keep their houses. 1 *Jas.* 1. c. 31.

Riots.

RIOTS.—Constables are bound to assist in sup-

pressing riots, and may command the assistance of other persons in the king's name. They are also to assist justices under the Riot Act (1 Geo. 1. c. 5.) in apprehending all offenders.

ROGUES and VAGABONDS.—Constables to take all such into custody. By the 5 Geo. 4. c. 83. which repeals all former acts relative to *Rogues and Vagabonds*, a person able to maintain himself, and wilfully neglecting so to do, becoming chargeable to any parish, &c.; every petty chapman or pedlar wandering abroad and trading, without being licensed; every common prostitute wandering in the streets or highways, or place of public resort, and behaving in a riotous or indecent manner; and persons wandering abroad, or placing themselves in any public place, street, highway, to beg alms, or causing any child so to do, shall be deemed idle and disorderly persons, and committed to the house of correction, not exceeding one month.

Rogues and vagabonds.

Provisions of 5 Geo. 4. c. 83. concerning.

Persons committing any of the offences before mentioned, after having been convicted as an idle and disorderly person; every person pretending to tell fortunes, or using any device, to impose on any person; persons wandering abroad and lodging in any barn or outhouse, or in any unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence; wilfully exposing to view, in any street, highway, any obscene print, or exhibition; wilfully and obscenely exposing his person in any street or public highway, or in view thereof, or in any place of public resort, with intent to insult any female; exposure of wounds or deformities to obtain alms; going about as a collector of alms, or to procure charitable contributions, under any false pretence; running away and leaving his wife, or child, chargeable to any parish; playing or betting in any street, highway, or public place, with any table or instrument of gaming; having in his or her custody any picklock key, crow, jack, bit, or implement, with intent feloniously to break into any dwelling house, warehouse, or outbuilding, or armed with any gun,

pistol, cutlass, bludgeon, or offensive weapon, or having any instrument, with intent to commit any felonious act; being found in any dwelling house, warehouse, or outhouse, or in any inclosed yard, garden, or area, for any unlawful purpose; every suspected person or reputed thief, frequenting any river, canal, or navigable stream, dock, or basin, or any wharf or warehouse, or place adjacent, with intent to commit felony; and every person apprehended as an idle person, and violently resisting any constable or peace officer so apprehending him, or her, and being convicted of the offence, shall be deemed a *rogue and vagabond*; justice may commit such offender to the house of correction, not exceeding three months; and every such picklock key, crow, jack, bit, and other implement, and every such gun, pistol, cutlass, bludgeon, or other offensive weapon, shall become forfeited.

Persons breaking out of any place of legal confinement before the expiration of the term for which committed, or committing any offence against this Act which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time convicted; and every person apprehended as a rogue and vagabond, and violently resisting any constable or peace officer, shall be deemed an *incorrigible rogue*, and justice may commit such offender to the house of correction, to remain until the next sessions.

Any person may apprehend a person found offending against this Act, and take him or her before some justice, or deliver him or her to any constable or peace officer; and any constable or peace officer refusing to take offenders into custody, and to take him or her before some justice, or who shall not use his endeavours to apprehend and to convey before some justice any person that he shall find offending against this Act, shall be deemed guilty of a neglect of duty.

Any justice, upon oath being made that any person hath committed or is suspected to have committed any offence against this Act, to issue his

warrant to apprehend and bring before some justice the person so charged.

Any constable, peace officer, or other person apprehending any person charged with being an idle and disorderly person, or a rogue and a vagabond, is empowered to take any horse, mule, ass, cart, car, caravan, or other vehicle, or goods in the possession of such person, and to take the same as well as such person before some justice, to be searched, and his or her trunks, boxes, bundles, or parcels, shall be inspected in presence of the justice, and of him or her; and any cart, &c. found in his or her possession, shall be searched; and any money found upon such offender shall be applied towards the expence of apprehending, conveying to the house of correction, and maintaining such offender during the time committed; and if upon such search money sufficient be not found, such justice to order such effects to be sold, and produce of sale paid and applied as aforesaid, and the overplus, after deducting charges of sale, returned to offender.

When any justice shall commit any *incorrigible rogue* to prison to remain till the sessions, or when any idle and disorderly person shall give notice of appeal against the conviction, and enter into recognizance, such justice shall require the person by whom offender is apprehended, and persons whose evidence shall appear material, to be bound in recognizance to appear at the sessions, to give evidence.

Sessions to detain and keep to hard labour, and punish by whipping.

If any peace officer shall neglect his duty, or any person shall hinder a peace officer, he shall forfeit 5*l*.

Lodging houses, &c. suspected to conceal vagrants may be searched.

Persons aggrieved may appeal to the next sessions.

Justices empowered to grant certificates to persons discharged from prison to receive alms in their route.

Justices not to grant certificates enabling persons

to ask relief on route, except to soldiers and sailors. (43 Geo. 3. c. 61.) Other persons asking alms to be deemed rogues and vagabonds.

Persons convicted under this Act to be chargeable to the parish in which they reside.

Persons committing offences under former Acts to be punished under this Act.

Soldiers.

SOLDIERS.—Constables are to quarter soldiers in inns, alehouses, victualling houses, &c. and to give in lists to the justices of the houses and persons obliged to quarter soldiers, and to provide carriages for troops on a march. By the annual Mutiny Act, however, s. 24. any constable quartering or billeting any officer or soldier in a *private house*, without the consent of the owner, is liable to an action at law; and if he quarter any of the wives, children, or servants of any officer or soldier in any house, without such consent, he shall forfeit 20*s.* to be levied by distress. If any constable shall neglect, for the space of two hours, to quarter soldiers, when required, or shall receive or agree for any reward for exempting any person from such billet or quartering, he shall forfeit, under the same act, not exceeding 5*l.* nor less than 40*s.*

Stolen lead, &c.

STOLEN LEAD, BRASS, &c.—By 22 Geo. 3. c. 58. every constable, beadle, and watchman upon duty, shall apprehend any person suspected of having, between sun-set and sun-rise, any lead, iron, copper, brass, bell-metal, or solder, supposed to have been stolen.

Statutes.

STATUTES, OR ACTS OF PARLIAMENT.—Constables are called on to be aiding and assisting, in various ways, in the execution of Acts of Parliament which would be almost innumerable.

Sunday.

SUNDAY.—Constables to enforce Acts against the profanation of, &c.

Surveyors of highways.

SURVEYORS OF THE HIGHWAYS.—Constables to be present and assist in the nomination, election, &c. of, see this Dictionary, title **HIGHWAYS**.

Swearing.

SWEARING. By 19 Geo. 2. c. 21. the constable is required to levy the penalties for *profane swearing*; viz. one shilling for a servant, labourer, &c.; two

shillings for others above that rank, but under the degree of a gentleman ; and five shillings for a gentleman. If the offender be unknown to the constable, he may be carried before the next justice or mayor ; if known to him, he is required to give information to some justice, in order that the fines imposed by the Act may be enforced. The swearing must be in the hearing of the constable, in which case if he neglect his duty, on conviction of such neglect by the oath of one witness, he is liable to a penalty of 40*s.* to be levied by distress and sale ; one moiety thereof to the informer, and the other to the poor ; and if distress cannot be found, he may be committed to the house of correction for one month.

WARRANTS.—It is great part of a constable's **Warrants.** duties to execute these, which are issued under a variety of Acts of Parliament. In all such cases, however, the constable's office is chiefly ministerial. Concerning warrants for apprehension of the person, see **ARRESTS.**

WATCH AND WARD.—Watching is properly for the apprehending of rogues in the night, as warding is for the day. It is the duty of the constable to keep *watch and ward*, concerning which there are many local statutes.

In order to impress constables with the nature and importance of their office, and to direct their attention to a diligent discharge of their several and important duties, it is usual for the justices of peace to issue printed instructions to the constable of each parish within their jurisdiction, in the following form :—

Instructions for Constables.

To Mr. _____, constable of the parish of _____, in the county of _____

Justice's instructions to constables.

It is your duty, as constable, to visit alehouses frequently, at times when you are *not* expected, and to see that no irregularities are permitted.

To give notice to magistrates of any such person as keep alehouses without a license.

To prevent drunkenness, by giving notice of such as are guilty of it.

To prevent gaming, and to give notice to justices of those who keep houses in which gaming at any time is permitted.—To seize E O tables, or any other tables or implements for gaming, used at fairs or other public meetings.

To prevent abuses of the Lord's Day, commonly called Sunday, such as tippling in alehouses during divine service, using dogs, guns, snares, nets, or other engines for killing or destroying game, using games or pastimes, following worldly callings, or travelling with waggons, vans, or other carriages; and driving cattle.

To carry before a magistrate such persons as are guilty of profane swearing and cursing, if they are unknown to you; or to give notice to magistrates if they are known to you.

To apprehend and carry before a magistrate any person being able, wholly or in part, to maintain himself or herself, or family, by work or other means, and wilfully refusing or neglecting so to do, by which he or she, or his or her family, shall have become chargeable to the parish.

To apprehend, and carry before a magistrate, every person returning to, and becoming chargeable to, the parish from whence he or she shall have been legally removed, without a certificate from the churchwardens and overseers of the poor of some other parish acknowledging him or her to be settled there.

To apprehend, and carry before a magistrate, every petty chapman or pedlar wandering abroad, and trading, without being duly licensed.

To apprehend, and carry before a magistrate, every prostitute wandering about in the public streets, or public highways, or in any places of public resort, and behaving in a *riotous or indecent* manner.

To apprehend, and carry before a magistrate, every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing, pro-

curing, or encouraging, any child or children so to do.

To apprehend, and carry before a magistrate, every person wandering abroad, and lodging in any barn or outhouse, or in any deserted or unoccupied building.

To apprehend, and carry before a magistrate, every person exposing to view in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition.

To apprehend, and carry before a magistrate, any person openly, lewdly, and obscenely exposing his person in any street, road or public highway, in view thereof, or in any place of public resort.

To apprehend, and carry before a magistrate, every person wandering abroad, and endeavouring, by the exposure of wounds or deformities, to obtain or gather alms, or endeavouring to procure charitable contributions of any kind under false pretence.

To apprehend, and carry before a magistrate, every person running away, and leaving his wife and family chargeable to the parish.

To apprehend, and carry before a magistrate, every person playing or betting in any street, road, highway, or in any open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance.

To apprehend and carry before a magistrate, every person having in his or her custody or possession any picklock-key, crow-bar, jack, bit, or other implements for house-breaking; or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon or instrument, with intent to commit felony.

To apprehend, and carry before a magistrate, every person found in or upon any dwelling-house, warehouse, coach-house, stable, or out-house, or in any inclosed yard, garden, or area, for unlawful purposes; and every reputed thief frequenting any river, canal, or navigable stream, dock, or basin, or any highway or avenue leading thereto, or any street, highway, or other place adjacent, with intent to commit felony.

To apprehend, and carry before a magistrate, every person breaking or escaping out of any place of legal confinement, before the expiration of the term for which he or she shall have been committed.

To apprehend, and carry before a magistrate, any person who shall wilfully or maliciously do or commit any damage, injury, or spoil, to or upon any building, wall, fence, hedge, gate, stile, milestone, tree, wood, underwood, orchard, garden, nursery garden, crops, vegetables, plant, land, or other matter or thing growing or being thereon, or to or upon real or personal property of any nature or kind soever.

To make a general privy search whenever you are so required by the magistrates, and take care that it be *not known* at what time you intend to make such privy search.

To prevent nuisances of every description, by giving notice of them that commit them.

To prevent affrays, assaults, and breaches of the peace, by requiring the offenders to depart peaceably; and by apprehending them if they refuse so to do.

To give notice to the nearest magistrate of barrators wrangling, exciting or maintaining quarrels, disturbance of the public peace, and by false inventions, sowing calumniations, false rumours, and reports, whereby discord and disquiet may grow between neighbours.

To give notice to the nearest magistrate whenever you hear of any unlawful assembly, mob, or concourse of people.

To prevent persons throwing fireworks, squibs, rockets, &c. in the public streets or highways, by apprehending them if they will not desist.

To attend in case of any fire breaking out by night or by day; to assist in putting it out; and in preventing persons from plundering.

To give notice to the magistrates of such persons as are guilty of selling unwholesome provisions of any kind.

To give notice of persons using false weights or

measures.—Of bakers, chandlers, and other dealers, who sell their articles contrary to the assize.

To apprehend, and carry before a magistrate, hawkers or pedlars who travel without a licence.

To apprehend, and carry before a magistrate, persons having in their possession bundles of wood, poles, rails, posts, &c. suspected to be stolen.

To apprehend, and carry before a magistrate, persons reasonably suspected of being deserters from his majesty's service.

To apprehend and carry before a magistrate, persons charged with felony, and, if necessary, to command the assistance of by-standers, to confine felons, or put them in irons, if necessary, to prevent an escape when you are taking them before a magistrate, or to gaol.

To raise hue and cry for the pursuing and apprehending of an offender where a felony is committed, and he flies for the same.

To provide carriages on the marching of soldiers.

To return true lists of persons liable to serve in the militia ; which, when drawn out, you are to stick up against the door of your parish church.

To billet or quarter officers or soldiers according to the best of your judgment, without partiality and without unnecessary delay. If you take a reward to excuse any person, you will be liable to a penalty not exceeding 40*s.*, nor less than 10*s.*

To execute warrants without delay—to bring the offenders before the magistrate who granted them, (if specially mentioned,) or otherwise before the nearest magistrate—to hold the offenders in custody till discharged by the magistrate, or till they are delivered into the custody of the gaoler. And in serving a summons, to make the contents known to the party against whom it is granted—and to attend at the time and place set forth in the summons, to acquaint the magistrate who granted it what you have done.

Every constable is liable to be called on by the magistrates, at their petty or special sessions, to answer on oath the following inquiries.

Alehouses.

Questions
which the
Constable
may be called
upon to an-
swer on oath.

Are there any persons in your parish or hamlet who sell ale or spirituous liquors without a licence ?

How often, and on what days, have you visited the alehouses since your last return ?

Did you visit them at uncertain times, when the publicans had no notice of your coming ?

Have you regularly visited them on Sundays, before the commencement of Divine Service ? And did you, when you visited them, find them clear from company ?

Do the persons who keep alehouses sell their liquors in mugs or other vessels of full measure ?

Are their houses shut up at night at ten o'clock ?

Are the rules for good order, issued by the magistrates, stuck up in some conspicuous place in their houses ?

Drunkenness.

Have you given notice to the magistrates of those who are guilty of drunkenness and tippling ?

Gaming.

Do you know of any house in your parish, in which gambling of any description is permitted ?

Have you been careful to prevent gambling at fairs, or other public meetings within your district ?

Lord's Day, or Sunday.

Have you given notice to the magistrates of those who amuse themselves with idle sports on Sunday ?

Of those who exercise their worldly calling on that day ?

Of carriers, or others travelling with horses, wag-gons, vans, or other carriages ?

Of drovers travelling with cattle ?

Indecent and Improper Publications.

Have you given notice to the magistrates of per-

sons publicly selling, or suspected of secretly selling, indecent and improper publications ?

Have you apprehended any person singing indecent and seditious songs ?

Vagrants.

Have you apprehended persons whom you found begging ; petty chapmen wandering abroad without a license ; persons of evil fame, and prostitutes ; reputed thieves ; and such as had implements of house-breaking upon them ?

Affrays and Searchers of the Peace,

Have you been careful to prevent breaches of the peace, by apprehending the offenders, when they have refused to depart peaceably ?

Nuisances.

Do you know of any nuisances, such as carrying offensive materials into the highways ; laying obstructions in the highways ; stopping up water-courses ; leaving dangerous holes, pits, ponds, or ditches unsecured by rails ; suffering ruinous buildings to remain, which are in danger of falling upon his majesty's subjects ; suffering hogs to run at large in the streets ; or any other nuisance ?

IV. *His protection, indemnity, expenses, and allowances.*

We have already seen that if a constable neglect his duty, he may be indicted, and fined by justices of the peace ; on the other hand, he is strongly protected by law in the execution of his office.

By 7 Jac. 1. c. 5. if any action be brought against a constable for any thing done by him *by virtue of his office*, he, and all others who aided him therein, may plead the general issue, and give the special matter in evidence ; and if he recover against the plaintiff, he shall have *double costs*. And by the 21

Actions
against con-
stable.

Jac. 1. c. 12. such actions shall be tried in the county in which the fact charged was committed, and not elsewhere. (2 *Vent.* 45.)

By. 24 Geo. 2. c. 44. no action shall be brought against any constable, or other officer, or any person acting by his order, for any thing done in obedience to any warrant of a justice of peace, until demand of a perusal and copy of such warrant, and neglect or refusal of the same for the space of six days; and in case, after such demand and compliance therewith, any action shall be brought against such constable, &c. without making the justice a defendant, then, on producing and proving such warrant, the jury shall give a verdict for the defendant, notwithstanding any defect of jurisdiction in such justice: and if such action be brought jointly against such justice and constable, or his assistants, then, on proof of such warrant, the jury shall find for such constable and his assistants, and if the verdict be given against the justice, the plaintiff shall recover his costs against him, to be so taxed as to include the costs which the plaintiff shall be liable to pay to the defendants for whom verdict shall be so found.

Limitation of actions.

And no action shall be brought against any constable, &c. unless commenced within six calendar months after the act committed.

Construction of statute.

The above statute, however, would appear, from numerous decisions, to extend only to cases of tort, or, according to Lord Kenyon, where an officer, doing an act within the limits of his official authority, exercises that authority improperly, or abuses the discretion placed in him, (*Bul. N. P.* 24. 2 *Stark. M. P.* 457.) If a constable, *colore officii* (under colour, or pretended sanction of his office) commit an act of such a nature as could not be said to appertain to his duty, the statute will not protect him. (3 *Barn. and Ald.* 227.)

Killing constable.

If, in the execution of his office, and acting within his own district, a constable (or any person assisting him) after competent notice of his authority, be killed, it is murder. But see *Leach's Crown Law*, 211.

If two men are combating, and the constable in parting them is hurt, he shall have action of trespass, though if he hurt them, they shall not have action against him. And the same rule extends to those who aid him; every man assisting the constable in the execution of his office having the same protection that the law gives to the constable. (*2 Hale, P. C. 97.*)

Constable hurt.

If a constable be removed without just cause, the Court of King's Bench will, by rule of court, order him to be restored. (*Bulstr. 174.*)

May be restored, if removed without cause.

By 18 Geo. 3. c. 19. the constable is required, every three months, and within fourteen days after he goes out of office, to deliver to the overseers of the poor an account, entered in a book kept for that purpose and signed by him, of all sums by him expended in his office on account of the parish, and of all sums received by him on the same account; and the overseers shall, within the following fourteen days, lay the same before the inhabitants, and if approved by the majority, pay the amount due out of the poor-rate. But if the account, or any part, be disallowed, they shall return it to the constable, who may, after notice to the overseers, produce it before a justice, by whom it shall be examined, and who shall sign his name to the amount at which he shall settle it, which sum the overseers shall then pay out of the poor-rate. But if the overseers consider the parish aggrieved by any act or omission of the constable, or entertain decided objection to the account, or to the justice's determination, they may, if a majority of the overseers concur, appeal to the next general or quarter sessions. (18 Geo. 3.)

Constable's quarterly accounts of receipts and disbursements, how to be settled.

A rate may be made to reimburse constables, head-boroughs, or tithing-men, expenses occasioned by removing or relieving the poor. (13 & 14 Car. 2. c. 18.) And overseers are indictable for refusing to make such rate. (*Rex v. Bonlaw, Salk. 609; 1 Bott. 332.*)

Rate to reimburse constables, &c. in certain cases.

But a constable should be extremely cautious in incurring any expense without authority, for he is justified in charging such expenses only as he may

Caution as to expenses not allowable.

have defrayed in transacting *the business of the parish*. Thus, where a constable took an offender before a magistrate, who had, in his presence, grossly violated the decorum of a chapel, in which divine service was beginning, and he was bound over to prosecute, it was held, that the sum expended in the prosecution was not chargeable to the parish, as money expended in doing the business of the township (*Rex v. Saville and others*, 5, *Barn. & Ald.* 180); though it might have been differently ruled had the constable, previously to the prosecution, received from the inhabitants some authority to proceed. (*Ibid.*)

In like manner, in a much stronger case, in a prosecution for an assault on a parish officer, although the proceeding was directed by a justice, and approved by the court which tried it, the expenses allowed by the vestry, approved by two justices, and confirmed by the sessions, yet, on appeal to the Court of King's Bench, the order was quashed. (*Rex v. Bird*, 2 *Barn. & Ald.* 526.)

Expenses of
conveying
offenders.

The expenses of conveying offenders to gaol are to be paid by the offender, if he have means, and if he refuse, by sale of his goods, under a justice's warrant; but if such offender have not sufficient within the county in which he is taken to bear such charges, then any justice of the county may, by his warrant, order the treasurer of the county to pay all reasonable expenses.

Constable's
Fees.

Parish constables exercising their duty in cases in which the parish is concerned, are entitled to certain fees or allowances to be paid them by the overseers; but in many places the charges are left to the discretion of the constable, subject to the control of the justices. The following is a list of the fees usually paid to constables in Middlesex.

Constable's Table of Fees.

For the oath of office.....	£0	1	0
For the service of any warrant at the dis- tance of the parish	0	1	0

CONSTABLE.

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And for every mile beyond the limits of the parish, per mile.....	£0	0	6
If beyond the distance of five miles, and not exceeding a day's journey.....	0	5	0
For every journey of one day, or more, per day, including expenses.....	0	10	0
For attending the bench of justices at their petty sessions.....	0	1	6
The like at their general or quarter sessions, (including expenses).....	0	10	0
Attending the coroner with a notice of death.....	0	4	6
Summoning the jury, and attending the inquisition.....	0	6	8
Expense of jury.....	0	10	0
Billeting soldiers.....	}	<i>fees not known.</i>	
Pressing of waggons for soldiers' baggage			
Attending on a search-night, or at a fair in the parish.....	0	2	0
Attending to see that the shops and public-houses are shut during divine service.....	}	<i>fees not known.</i>	
Attending on the day of election of a member of parliament, unless paid by the candidate.....			
For conveying a felon or other prisoner to gaol, where the parish is liable to pay the expense (including expenses)....	0	10	0
Making out a list of persons to serve in the militia, or any other military corps	1	1	0
Verifying the same.....	0	1	0
Securing any person balloted in militia, &c.	0	1	0
Service of any parish-rate summons....	0	0	4
Attending on a peace officer within the parish on any public occasion, or at the execution of any sentence on any criminal.....	0	2	0

V. His responsibility, and punishment for neglect.

Neglect in
affrays, riots,
&c.

If a constable neglect his duty in cases of affray or riot, or in the apprehension of felons, he may be indicted for a misdemeanour, and punished by fine and imprisonment (2 *Hale's P. C.*); and so he may for the neglect of any duty imposed on him by statute, where no other punishment is specifically pointed out. (1 *Salk.* 381.)

And even other persons called on by the constable to aid him in the execution of his duty, are amenable to the like punishment for refusal or neglect. (*Ibid.*)

Power of Jus-
tices to fine.
33 Geo. 3. c.
55.

By the 33 Geo. 3. c. 55. any two or more justices, at special or petty sessions, upon complaint on oath of neglect of duty in any constable, or other peace-officer, may, on his being summoned, impose on him a reasonable fine for such offence, not exceeding 40s. to be levied, in default of payment, by distress and sale; and for want of such distress, the offender to be committed to the house of correction for not exceeding ten days. Persons aggrieved may appeal to the sessions, giving ten days' notice.

Neglecting
returns for
county rate.

By the 55 Geo. 3. c. 51. s. 4. if any constable neglect to make the necessary returns of the rateable property within the parish, when required, for the purpose of assessing the county rate, he is liable to a penalty not exceeding 20l., to be imposed by the general or quarter sessions, and levied by distress if not paid; as also to a penalty not exceeding 10l. for neglecting to produce assessment-books in his hands, or to give evidence concerning the same, when required by the sessions.

Or not pro-
ducing as-
sessments.

Neglect in
proceeding
against dis-
orderly
houses.

If neglecting proceedings against disorderly houses, the penalty is not exceeding 20l. to any of the inhabitants giving him the prescribed notice of such houses.—See title **DISORDERLY HOUSES** in this Dict.

Other penal-
ties.

And in all other cases of neglect of duties imposed on the constable by various statutes, penalties are prescribed; viz. under the Militia Act, 42 Geo. 3. c. 90. 20l.; for neglecting to assist excise officers,

under 6 Geo. 4. c. 80. 20*l.* ; for neglecting to make or return lists, give notices, serve warrants, &c. under the Highway Act, 40*s.* ; for neglecting to apprehend vagabonds, 5*l.* ; &c. &c.

Special Constables.

Special constables are such persons as may be called on by the magistrates on special occasions, to act in the capacity of constables for the preservation of the peace. They are armed temporarily with the powers of constables, and the same protection is extended towards them in the execution of the duties they are called upon to perform. Special constables, what.

By the 1 Geo. 4. c. 37. it is enacted, that whenever it shall appear to any two justices, *by information on oath of five respectable householders* within their jurisdiction, that any tumult, riot, or felony, has taken place, or is likely to take place, such justices may nominate and appoint, by precept under their hands, *any householders or other persons not legally exempt from serving the office of constable* residing within their divisions, or neighbourhood, to act as special constables, for such time and in such manner as the said justices shall think necessary. And if any person so appointed, and not legally exempt, shall refuse or neglect to act, he shall be liable to the same penalties and punishment as a person refusing the office of constable (which see *ante*). And the justice at the general or quarter sessions may direct reasonable allowances for trouble and expenses to be made to such special constable, and to be paid by the treasurer of the jurisdiction. Justices may appoint.
Penalty for refusal or neglect to act
Allowances & expenses.

Street Constables.

Street constables are such as are appointed by justices on application of the inhabitants, to keep the peace within a certain street or square. Street constables, what.

By the 6 Geo. 4. c. 21. (commonly called the Metropolis Act) it is enacted, that any two justices appointed under the 3 Geo. 4. c. 55. to any of the

May be appointed on application of inhabitants of street, &c.

Wages, and by whom to be paid.

police offices by that Act established, upon the application of five of the inhabitants of any street or square, or the proprietors of any place of public resort within the bills of mortality, may appoint a competent number of persons, recommended by such inhabitants or proprietor, and approved by such justices, to keep the peace within such street, &c. for such time as such justices shall deem necessary, and administer oaths to the constable for such purpose; and every such constable shall have within the limits and time for which he shall serve, the full powers, &c. of a constable, and shall be paid by the persons on whose application he shall be appointed, such wages as the justices shall deem reasonable.

New Police Constables.

The new police, instituted by Sir R. Peel's Act (the 10 Geo. 4. c. 44.) and which establishes an entirely new system of protection to persons and property, both by night and day, have in general the same powers, obligations, and protection, as ordinary constables.

New Police Act.
10 Geo. 4. c. 44.
Preamble recites insufficiency of old watch and police.

The Act which was passed for the formation and regulation of this new force, recites, that "whereas offences against property have of late increased in or near the metropolis; and the local establishments of nightly watch and nightly police have been found inadequate to the prevention and detection of crime, by reason of the unfitness of the individuals employed, the insufficiency of their number, the limited sphere of their authority, and their want of connexion and co-operation with each other; and whereas it is expedient to substitute a new and more efficient system of police, in lieu of such establishments of nightly watch and nightly police, within the limits hereinafter mentioned, and to constitute an office of police, which, acting under the immediate authority of one of his majesty's principal secretaries of state, shall direct and control the whole of such new system of police within those limits:" be it therefore enacted, "that it shall be lawful for his majesty to cause a new po-

lice office to be established in the city of Westminster, and by warrant under his sign manual to appoint two fit persons as justices of the peace in the counties of Middlesex, Surrey, Hertford, Essex, and Kent, and of all liberties therein, to execute the duties of a justice of the peace at the said office, and in all parts of those several counties, and the liberties therein, together with such other duties as shall be hereinafter specified, or as shall be from time to time directed by one of his majesty's principal secretaries of state, for the more efficient administration of the police within the limits hereinafter mentioned; and his majesty may remove either of the said justices, if he shall see occasion so to do, and may, upon any vacancy, by death, removal, or otherwise, appoint another fit person as a justice of the peace of the counties of Middlesex, Surrey, Hertford, Essex, and Kent, and of all liberties therein, to execute the duties aforesaid, in lieu of the person making such vacancy; and it shall be lawful for his majesty to appoint any person to be justice of the peace by virtue of this Act, and for such person, during the continuance of his appointment, to execute the office of justice of the peace for the counties of Middlesex, Surrey, Hertford, Essex, and Kent, and for all liberties therein, although he may not have any such qualification by estate as is required by law in the case of any other person being a justice of the peace for any county: provided always, that no such person shall act as a justice of the peace at any court of quarter or general sessions, nor in any matter out of sessions, except for the preservation of the peace, the prevention of crimes, the detection and committal of offenders, and in carrying into execution the purposes of this Act."

And establishes a new police office, with two justices.

Justices need not be qualified by estate.

Proviso.

Sect. 2 prescribes the oath to be taken by the justices.

Oath of justices.

Sect. 3 prescribes their salary at 800*l.* per annum, each, payable quarterly, out of the consolidated fund.

Salary.

Sect. 4. The whole of the city and liberties of Westminster, and such of the parishes, townships, precincts, and places, in the counties of Middlesex, Surrey, and

Westminster, and parts of Middlesex, Surrey, and

Kent, to form the "Metropolitan Police District."

Men to be appointed as a police force for the whole district.

To have full powers, liabilities, &c. of constables.

Justices, with approbation of secretary of state, to make regulations, &c. for management of the police force.

And may dismiss or suspend men.

Penalty on victuallers,

Kent, as are enumerated in the schedule to this Act, shall be constituted, for the purposes of this Act, into one district, to be called "The Metropolitan Police District;" and a sufficient number of fit and able men shall from time to time, by directions of one of his majesty's principal secretaries of state, be appointed as a police force for the whole of such district, who shall be sworn in by one of the said justices to act as constables for preserving the peace, and preventing robberies and other felonies, and apprehending offenders against the peace; and the men so sworn shall, not only within the said district, but also within the counties of Middlesex, Surrey, Hertford, Essex, and Kent, and within all liberties therein, have all such powers, authorities, privileges, and advantages, and be liable to all such duties and responsibilities, as any constable within his constablewick, and shall obey all such lawful commands for conducting themselves in the execution of their office, as they shall receive from the said justices.

Sect. 5. The said justices may, from time to time, subject to the approbation of one of his majesty's principal secretaries of state, frame such orders and regulations as they shall deem expedient for the government of the men appointed members of the police force under this Act; places of their residence; the classification, rank, and particular service of the several members; their distribution and inspection; the description of arms, accoutrements, and other necessities, to be furnished to them; and which of them shall be provided with horses for the performance of their duty; and all such other orders and regulations as the said justices shall from time to time deem expedient for preventing neglect or abuse, and for rendering such police force efficient in the discharge of all its duties; and the said justices may at any time suspend or dismiss any man belonging to such police force whom they shall think negligent or remiss in the discharge of his duty, or otherwise unfit; and all men so dismissed shall cease to be vested with the powers of constable.

Sect. 6. If any victualler, or keeper of any house,

shop, room, &c. for the sale of liquors, spirituous or otherwise, knowingly harbour or entertain any man belonging to the said police force, or permit him to remain in his house, &c. during any part of the time appointed for his being on duty, such victualler, &c. on conviction before any two justices, shall forfeit for every such offence a sum not exceeding 5*l*.

Sect. 7. It shall be lawful for any man belonging to the said police force, during the time of his being on duty, to apprehend all loose, idle, and disorderly persons, whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of any evil designs, and all persons whom he shall find between sunset and the hour of eight in the forenoon lying in any highway, yard, or other place, or loitering therein, and not giving a satisfactory account of themselves, and to deliver any person so apprehended into the custody of the constable appointed under this Act, who shall be in attendance at the nearest watch-house, in order that such person may be secured until he can be brought before a justice of the peace, to be dealt with according to law, or may give bail for his appearance before a justice, if the constable deem it prudent to take bail, in the manner hereinafter mentioned (see sect. 9).

&c. harbouring policemen during hours of duty.

Powers of police, while on duty, to apprehend loose, idle, and disorderly persons.

And to deliver them into custody.

Sect. 8. If any person assault or resist any such policeman in the execution of his duty, or aid or incite any person so to assault or resist, every such offender, on conviction before two justices, shall forfeit not exceeding 5*l*.

Assaults on police on duty.

Sect. 9. Where any person charged with any petty misdemeanour shall be brought, without a warrant of a justice of the peace, into the custody of any constable appointed under this Act, during his attendance in the night-time at any watch-house within the metropolitan police district, it shall be lawful for such constable, if he shall deem it prudent, to take bail by recognizance, without any fee or reward, from such person, conditioned that such person shall appear for examination before a justice of the peace at some place to be specified by the recognizance, at the hour of 10 in the forenoon next after such re-

Night-constable under this Act may take bail by recognizance for the appearance of persons charged with petty misdemeanours.

cognizance shall be taken, unless that hour should fall on a Sunday, or on a Christmas-day, or Good Friday, and in that case at the like hour on the succeeding day; and every recognizance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if the same had been taken before a justice of the peace; and the constable shall enter, in a book to be kept for the purpose of every watch-house, the names, residence, and occupation, of the party, and his surety or sureties, if any, entering into such recognizance, together with the condition thereof, and the sums respectively acknowledged, and shall lay the same before such justice as shall be present at the time and place when and where the party is required to appear; and if the party does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognizance to be drawn up, to be signed by the constable, and shall return the same to the next general or quarter sessions of the peace, with a certificate at the back thereof, signed by such justice, that the party has not complied with the obligation therein contained; and the clerk of the peace shall make the like estreats and schedules of every such recognizance, as of recognizances forfeited in the sessions of the peace; and if the party not appearing shall apply by any person on his behalf, to postpone the hearing of the charge against him, and the justice shall think fit to consent thereto, the justice shall be at liberty to enlarge the recognizance to such further time as he shall appoint; and when the matter shall be heard and determined, either by dismissal of the complaint, or by binding the party over to answer the matter thereof at the sessions, or otherwise, the recognizance for the appearance of the party before a justice shall be discharged, without fee or reward.

Such recognizances to be as valid as though made before a justice.

To be entered in watch-house book, &c.

And in default of appearance, to be estreated.

Or the hearing may be postponed, on application.

His Majesty to appoint a receiver of all monies under this Act;

Sect. 10. His Majesty may appoint a proper person to receive all sums of money applicable to the purposes of this Act, who shall be called "the Receiver for the Metropolitan Police District;" and his Majesty may remove any such receiver, if he

shall see occasion so to do, and upon vacancy in that office, by death, removal, or otherwise, appoint another person to be such receiver; and the receiver for the time being shall give security to his Majesty, in a bond, with two sureties, in such sum as the commissioners of his Majesty's treasury shall direct, to be conditioned for the faithful performance of his duty, and for the due application of all monies paid to him; and the receiver for the time being shall receive all sums of money applicable to the purposes of this Act, and keep an exact account thereof, and shall immediately pay all monies, bills, and notes, by him received, into the Bank of England; and the same shall be placed to "the Account of the Public Monies of the Receiver of the Metropolitan Police District;" inserting the name of the receiver for the time being; and the said receiver shall draw out of the Bank from time to time such sums as may be necessary for the payment of the salaries, wages, and allowances, to be paid as hereinafter mentioned to the persons belonging to the police force appointed under this Act, and also for the payment of all other charges and expenses in carrying this Act into execution; and every draft or order for money on the Bank of England drawn by the receiver, shall be countersigned by one of the justices appointed under the Act; and all drafts and orders so drawn and countersigned, but not otherwise, shall be a sufficient authority to the Bank to pay the amount thereof to the persons named in them, or to the bearers of them.

Who shall
give security;

And pay all
monies, &c.
into the Bank
of England;

Drawing
from time to
time for sala-
ries, wages,
&c. of the
police force

Proviso as to
such drafts.

Sect. 11. The receiver shall account for the due application of all monies so to be drawn by him out of the Bank of England, and shall, once in every six months, and oftener, if required by one of his Majesty's principal secretaries of state, make out and sign a full and particular account of all monies received by him under this Act, and how much thereof hath been paid by him, and for what purposes, together with proper vouchers for the receipts and payments; and such accounts shall be delivered, for the purpose of being examined and audited, either to the

Receiver's
accounts to be
made up
every six
months, and
audited.

commissioners for auditing the public accounts of this kingdom, or to any other persons whom such principal secretary of state may from time to time direct; and the receiver, if directed to account before the said commissioners, shall be subject to the same regulations and penalties in that respect as any public accountant.

Receiver may deduct 700*l.* per annum, as his own salary; and shall pay salaries, &c. of the police force, and approved expenses;

Sect. 12. "The receiver, out of the monies so received by him, shall be allowed a yearly salary not exceeding 700*l.* to be payable quarterly; and the receiver, out of the same monies, shall from time to time pay to the persons belonging to the police force appointed under this Act, such salaries, wages, and allowances, and at such periods, as one of his Majesties principal secretaries of state shall direct, and also any extraordinary expenses which shall appear to have been necessarily incurred in apprehending offenders and executing the orders of either of the justices appointed under this Act, such expenses being first examined and approved of by one of the said justices; and the receiver shall likewise pay any further sums which such principal secretary of state shall direct to be paid to any of the persons belonging to the said police force, as a reward of extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received; or shall be worn out by length of service; and he shall also pay all other charges and expenses which such principal secretary of state shall direct to be paid for carrying this Act into execution."

And all compensations and allowances ordered by secretary of state.

Balance of cash on death of receiver.

Sect. 13 enacts, that upon the death or removal of receiver, the balance of cash at the Bank shall be transferred to his successor.

Suing for balance, on removal of receiver.

Sect. 14 provides, that upon the removal of receiver, his successors may sue for any balance remaining in his hands; prescribes the mode of proceeding, &c.

Suing for balance from representatives, &c.

Sect. 15 prescribes the mode of proceeding against the representatives of a deceased receiver, and points out what shall be sufficient proof of the receiver's

official character in all actions brought or proceedings instituted and carried on by him under this Act.

Sect. 16 empowers the receiver to contract for any land or buildings that may be required under this Act, and vests such property, together with all watch-houses, watchboxes, arms, accoutrements, &c. in him officially, empowering him also to sell the same by order of a principal secretary of state.

Receiver may contract for lands, &c.

Sect. 17 authorises the sale of lands, &c. to such receiver by bodies corporate, commissioners, vestry-men, &c., and enacts that, in case of disagreement, the value shall be settled by a jury.

Bodies corporate, &c. may sell lands.

Sect. 18. No justice of the peace or receiver appointed by virtue of this Act shall, during the continuance of this appointment, be capable of being elected, or of sitting as a member of the House of Commons; and no justice, receiver, or person belonging to the police force appointed by virtue of this Act shall, during the time that he shall continue in any such office, or within six calendar months after he shall have quitted the same, be capable of giving his vote for the election of a member to serve in parliament for the counties of Middlesex, Surrey, Hertford, Essex, or Kent, or for any city or borough within the metropolitan police district, nor shall, by word, message, writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of any person to be a member to serve in Parliament for any such county, city, or borough; and if any such justice, receiver, or person belonging to the police force, shall offend therein, he shall forfeit the sum of 100*l.* to be recovered, by any person who will sue for the same, by action of debt, to be commenced within six calendar months after the commission of the offence; and one moiety of the sum so recovered shall be paid to the informer, and the other moiety thereof to the receiver appointed under this Act, to be by him added to and applied as part of the funds for the purposes of the police under this Act: provided always, that nothing in this enactment contained shall subject any such justice, receiver, or person

No justice or receiver under this act to sit in parliament.

No justice, receiver, or any of the police, to vote at certain elections.

Or interfere therein, except officially.

Penalty. 100*l.*

How to be applied.

Proviso.

belonging to the police force, to any penalty for any act done by him at or concerning any of the said elections in the discharge of his official duty.

Old watch,
and penalties
for not giving
up boxes, &c.

Sect. 19 enacts that the old watch in each parish, &c. in the metropolitan district, at the time of passing this Act, should continue until it were notified to such parish that the new police is appointed, and then all watch boxes, arms, &c. should be given up to the new police, and the old watch-rate to cease; prescribing penalties for not giving up the watch boxes, &c. not exceeding 5*l.* for each offence.

This act not
to affect
paving and
lighting
rates, &c.

Sect. 20. That nothing herein contained shall be deemed to affect or alter any powers or authorities for assessing and levying any rate in any parish, township, precinct, or place, so far as such rate may relate to paving, lighting, cleansing, or any other object, except the night watch, night police, or any expense incident thereto.

Provision
for outstand-
ing debts.

Sect. 21 makes provision for charging on the rates, as before, all outstanding debts incurred by parishes in building watch-houses, &c. previous to the passing of this Act.

Justices'
powers to set
up watch-
boxes.

Sect. 22. That the justices appointed under this Act, subject to the approbation of one of his majesty's principal secretaries of state, may order such a number of watch-boxes as they shall from time to time think fit to be placed or fixed in such parts of the highways in any of the parishes, townships, precincts, or places within the metropolitan police district, as the said justices shall deem most convenient.

Justices may
issue war-
rants to over-
seers of pa-
rishes, &c. for
raising sums
necessary for
the purposes
of the police
out of the
poor-rate.

Sect. 23. That as soon as the police to be appointed under this Act shall take charge of any parish, township, precinct, or place, whether parochial or extraparochial, within the metropolitan police district, it shall be lawful for the justices appointed under this Act forthwith, and so from time to time, subject to the approbation of one of his majesty's principal secretaries of state, to issue a warrant under their hands to the overseers of the poor of such parish, township, precinct, or place, by which warrant they shall command the said over-

seers, out of the money collected for the relief of the poor in such parish, township, precinct, or place, to pay the amount mentioned in the warrant for the purposes of the police under this Act, or to levy such amount as a part of the rate for the relief of the poor in such parish, township, precinct, or place, and that the overseers shall pay over the amount mentioned in the warrant, to the receiver to be appointed under this Act, within forty days from the delivery of such warrant to any one of the overseers : provided always that the sum to be paid for the purposes of the police under this Act shall not exceed in the whole in any one year the rate of eightpence in the pound on the full and fair annual value of all property rateable for the relief of the poor within such parish, township, precinct, or place, such full and fair annual value to be computed according to the last valuation for the time being acted upon in assessing the county rate ; and that the warrant shall specify the rate in the pound at which the sum mentioned therein shall be computed.

Rate not to exceed in any year 8d. in the pound on value of property, according to valuation for county rate.

Sect. 24. That where any persons other than the overseers of the poor shall, by virtue of any office or appointment, be authorised and required to make and collect or cause to be collected the rate for the relief of the poor in any parish, township, precinct, or place, within the metropolitan police district, such persons, by whatsoever title they may be called, shall be deemed to be the overseers of the poor within the meaning of this Act, and to be included under and denoted by the words "overseers of the poor," for all the purposes of this Act, as fully as if they were commonly called or known by the title of overseers of the poor.

Who to be deemed overseers within this act.

Sect. 25. That the overseers of the poor of every parish, township, precinct, or place, within the metropolitan police district, to whom any such warrant as aforesaid shall be issued, shall pay the amount mentioned in the warrant, out of the money in their hands collected for the use of the poor ; and if there be no such money in their hands, or an insufficient sum, they shall levy the amount required as a part

Overseers to pay amount of police rate out of the poor-rate ;

or levy the same in the same manner.

of the rate for the relief of the poor, and shall for that purpose proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor; and such overseers shall pay to the receiver the amount mentioned in the warrant within the time specified for that purpose, and at the time of making any payment to the receiver, shall deliver him a note in writing signed by them, specifying the amount so paid, which note shall be kept by the receiver as a voucher for his receipt of that particular amount; and the receipt of the receiver, specifying the amount paid to him by the overseers, shall be a sufficient discharge to the overseers for such amount, and shall be allowed as such in passing their accounts with their respective parishes, townships, or places.

The amount to be paid to the receiver under this act;

Whose receipt shall be sufficient discharge.

Overseers, on non-payment of the police rate, may be distrained on.

In default of sufficient distress, arrears to be added to next levy on the parish.

Occasional overseers may be appointed in particular cases.

With full powers of overseers.

Sect. 26. That in case the amount ordered by such warrant as aforesaid to be paid by the overseers in any parish, township, precinct, or place within the metropolitan police district, shall not be paid to the receiver in the time specified by the warrant, the justices appointed under this Act, upon complaint made to them thereof by the receiver, may issue their warrant for levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said overseers, and in case the goods of all the overseers should not be sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such parish, township, precinct, or place for the purposes of the police under this Act, and shall be collected by the like methods; and the said justices, in case of any default or neglect of any overseer or overseers, or in any other case in which one of his majesty's principal secretaries of state shall so direct, may appoint two or more persons to act as overseers of the poor, within any parish, township, precinct, or place in the metropolitan police district, for levying the money for the purposes of the police under this Act; and the persons so appointed shall proceed in the same manner, and shall have the same powers, remedies, and privileges, and shall be subject

to the same regulations and penalties, with reference to the levying of such money, as if they had been appointed overseers of the poor by virtue of any law or laws now in force.

Sect. 27. That where any messuages, lands, tenements, or hereditaments within the police district, shall be occupied by any ambassador, agent, or other public minister of any foreign prince or state, or by the servant of any such ambassador, agent, or minister, or by any other person not liable by law to the payment of the poor's rate, all such sums as would by this Act have been payable for the police by the occupier of such messuages, lands, tenements, or hereditaments, if such occupier had been rateable to the relief of the poor, shall in such case be paid by and recoverable from the landlord or owner thereof, who shall for this purpose be deemed the occupier thereof, and shall be liable to all such proceedings for non-payment of such money as any person is by law liable to for non-payment of poor-rate.

Police rate of houses occupied by an ambassador, &c. to be paid by the landlord or owner.

Sect. 28. That any justice appointed under this Act, or any person having an order for that purpose under the hand of such justice, may inspect any county rate made or to be made for any county, any part of which shall be situate within the metropolitan police district, and may also inspect any returns concerning all or any of the parishes, townships, precincts, and places, whether parochial or extra-parochial in the said district, delivered or to be delivered in pursuance of any of the Acts relating to the county rates and may take copies or extracts from any such rates, or returns without payment of any fee or reward; and if any person having the custody of any such rate or return shall wilfully neglect or refuse any such justice or other person to inspect the same, or to take copies or extracts from the same, within two days after such order shall have been produced and shown to him, or a copy thereof left at his usual abode, he shall, on conviction thereof before any two justices of the peace forfeit and pay for every such offence such sum, not exceeding ten pounds, as they shall think meet.

Country rates and returns may be inspected by justices.

Penalty for refusing to allow inspection, &c. 10f.

Accounts to be annually laid before parliament.

Sect. 29. That an account of all monies received and expended for the purpose of this Act, made up to the 31st of December in each year, shall annually be laid before both houses of parliament, within thirty days thereafter if parliament be then sitting, or within thirty days after the meeting of parliament subsequent to the 31st of December; and such account shall specify the total sum charged upon and received from every parish, township, precinct, or place, for the purposes of this Act, and the rate in the pound at which such sum shall have been computed, and the total annual value of the entire property in any such parish, township, precinct, or place, as such total annual value shall be stated in the last valuation for the time being acted upon in assessing the county rate; and such account shall also specify the different heads of expenditure for the purpose of the police, and the amount actually expended under each.

How police rate to be assessed in parishes, &c. not rateable to the poor-rate.

Sect. 30. And whereas it is expedient to provide for those precincts and places in the metropolitan police district in which no rate is made for the relief of the poor, or in which property may be deemed not to be rateable thereto; it is enacted, that the respective inhabitants of all messuages, lands, tenements, and hereditaments in any precinct or place, whether parochial or extra-parochial, in the metropolitan police district, although such messuages, lands, tenements, hereditaments may not be rated to the relief of the poor, or may be deemed not to be rateable thereto, shall nevertheless be liable to contribute to the expense of the police under this Act, as if the property so inhabited or occupied were rateable and rated to the relief of the poor; and the justices appointed under this Act may from time to time, by warrant under their hands, appoint a proper person to be an assessor, for the purpose of assessing the full and fair annual value of such property, and rating the same to a police rate levied under this Act: provided always, that the sum to be levied as a police rate shall not exceed in the whole in any one year the rate of eightpence in the pound on the full and fair

annual value of such property ; and such assessor shall, within forty days after the delivery to him of the warrant of his appointment, make, sign, and return to the said justices, an assessment for the precinct or place named in such warrant ; and the assessment shall be fairly written in a book, and shall specify in different columns the names of the inhabitants or respective occupiers of such messuages, lands, tenements, hereditaments, the full and fair annual value of the same, and the amount of the police rate charged on the inhabitants thereof, and, when the premises shall be unoccupied, the full and fair value thereof to let ; and every such assessor shall be allowed for his trouble and expenses, such remuneration as one of his majesty's principal secretaries of state shall direct, and the same shall be paid out of the amount of the police rate which shall be collected after such assessment.

Remuneration to assessors.

Sect. 31. That when such assessment shall have been allowed by the justices appointed under this Act, public notice of such assessment, and of the place where the same may be inspected, shall be given by affixing such notice on the door of the church or chapel, or some other conspicuous part of the precinct or place to which such assessment shall relate, upon the Sunday next or next but one after the same shall have been allowed ; and any person in whose custody such assessment may be shall permit every inhabitant or occupier of property included in such assessment to inspect the same, and to make any extracts therefrom, without payment of any fee or reward ; and if such person shall willingly neglect or refuse to permit any such inhabitant or occupier to inspect such assessment, or to make any extract therefrom, he shall, on conviction thereof, before any two justices of the peace, forfeit and pay for every such offence such sum, not exceeding 5*l.*, as the justices shall think meet.

Notice of assessment to be given publicly.

Inhabitants, &c. may inspect assessments.

Penalty for refusing inspection, 5*l.*

Sect. 32 enacts, that the justices appointed under this Act shall from time to time nominate one or more person or persons for levying the amount of the police rate charged in every such assessment,

Justices to nominate persons to levy police rate.

Amount to be paid to the receiver.

Appeals allowed.

Notice of appeal must be given.

and Recognizance entered into.

who shall proceed in the same manner, and shall have the same powers, remedies, and privileges, and shall be subject to the same regulations and penalties, with reference to the levying of such police rate, as if he or they were an overseer or overseers of the poor in a precinct or place rated to the relief of the poor, and shall pay over the amount of such police rate to the receiver to be appointed under this Act, or, in default thereof, shall be proceeded against in the same manner as overseers are by this Act to be proceeded against for non-payment.

Sect. 33 enacts, that if any person who shall have paid the amount of police rate charged upon him by the assessment made by an assessor appointed under this Act, shall think himself aggrieved by such assessment, on the ground that such assessment includes any property for which he is not rateable under this Act, or that it assesses his rateable property beyond its full and fair annual value, or that any person or persons is or are omitted out of such assessment, or that the property of any person or persons is assessed below its full and fair annual value, the person so aggrieved may appeal to the next court of general or quarter sessions, not less than twenty-one days after the public notice of such assessment shall have been given, as herein-before-mentioned: provided that the person so intending to appeal shall give to the receiver to be appointed under this Act a notice in writing of such appeal, and of the cause and matter thereof ten clear days at least before such sessions; and shall also, within three days after his notice of appeal, enter into a recognizance before some justice of the peace of the county, with two sufficient sureties, conditioned to try such appeal at the said sessions, and to abide the order of the court thereupon, and to pay such costs as shall be by the court awarded; and, in case such person shall appeal on the ground that any person or persons is or are omitted out of the assessment, or that the property of any person or persons is assessed below its full and fair annual value, the party so appealing shall not only give such notice of appeal to the receiver, and enter into such

recognizances as aforesaid, but shall also give a like notice of appeal to the person or persons so interested in the event of such appeal, as aforesaid, and shall enter into a recognizance within the times herein-before respectively mentioned ; and the person or persons so interested shall, if he or they shall desire it, be heard upon the appeal ; and the justices of the peace of such sessions, or some adjournment thereof, upon due proof of the notice having been given, and the recognizance having been entered into, as aforesaid, shall hear and determine the matter of the appeal in a summary manner, and shall make such order therein, with or without costs to either party, as the said justices shall think proper ; and, in case the said justices shall think the appellant entitled to relief, they shall order the assessment to be amended in such manner as may be necessary for giving him relief, and shall also order any money paid by him, which he was not liable to pay, to be returned to him ; and, in case he shall have appealed on the ground that any person or persons is or are omitted out of the assessment, the said justices may order the name of such person or persons to be inserted in the assessment, and to be therein rated at such amount as they shall deem just ; and, in case the appellant shall have appealed on the ground that the property of any person or persons is assessed below its full and fair annual value, the said justices may order the amount at which such person or persons is or are rated in the assessment to be altered in such manner as they shall deem just ; and the proper officer of the court shall, in each of the cases aforesaid, forthwith amend the assessment accordingly, but the assessment shall not be quashed or altered in respect to any other persons named therein ; and the determination of the justices at any such sessions or adjournments shall be final and conclusive.

Justices may amend assessment, to relieve the appellant.

Sect. 34. And whereas circumstances may occur which may render it expedient that the provisions of this Act may be extended to other places, in addition to the places which are enumerated in the schedule to this Act: be it therefore enacted, "that it shall

His Majesty may hereafter add other parishes to the metropolitan district.

Parishes so added, to be subject to the provisions of this Act.

be lawful for his Majesty from time to time, by the advice of his privy council, to order that any parishes, townships, precincts, or places, whether parochial or extra-parochial, in the counties of Middlesex, Surrey, Hertford, Essex, and Kent, of which any part shall be situate within twelve miles of Charing Cross, in the city of Westminster, shall, after a certain day to be named in such order, be added to and form part of the metropolitan police district, and be placed under charge of a police appointed under this Act; and all provisions herein-before contained, with regard to the discontinuance of the night-watch and night-police appointed previously to or independently of this Act, the cessation of their powers, the cessation of the powers for levying watch-rates, the giving up of watch-houses, watch-boxes, arms, accoutrements, and other necessities, together with the penalties for neglect or refusal in that behalf, the exception as to any watch-rate previously made, and the power to assess and levy rates for the debts previously incurred, and also all provisions herein-before contained with regard to the levying of money for the purposes of the police, the levying thereof as a part of the poor's rate, the amount of such levy, the payment thereof to the receiver, the proceedings against overseers for default, the addition of arrears to the next levy, the appointment of persons to act as overseers, and all provisions with regard to the assessment of property, and the rating of the same to a police rate by an assessor appointed under this Act, and with regard to the powers and duties of such assessor, as well as all other matters whatsoever, previous to, concomitant with, or consequent or contingent upon, such assessment, shall apply and be enforced in any parish, township, precinct, or place, which shall by order in council be added to the metropolitan police district, as fully and effectually as if such parish, township, precinct, or place, had been originally included in such district, by virtue of this Act."

Misnomer of parishes not to affect the

Sect 35. enacts, That no misnomer or inaccurate description of any parish, township, precinct, or place,

mentioned in the schedule to this Act, or in any order in council to be made as aforesaid, shall prevent or in any wise affect the execution of this Act, which shall apply and be enforced in every such township, &c. as fully and effectually as if the same had been correctly named and described in such schedule or order in council, provided that the same be designated therein to common intent and understanding; and united parishes shall, for the purposes of this Act, be deemed to be included under and denoted by the word "parish."

execution of this Act.

The word "parish" to include united parishes.

Persons punishable by summary conviction for offences under this Act, may be summoned, &c.

Sect. 36. And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this Act, be it enacted, that where any person shall be charged, upon the oath of a creditable witness, with any such offence before any justice of the peace, the justice may summon the person charged before any two justices of the peace, at a time and place to be named in such summons; and if the person charged shall not appear accordingly, then, upon proof of the due service of the summons, by delivering a copy thereof to such person, or by delivering a copy to the wife or servant, or some inmate of the family of such person, at his usual place of abode, the justices before whom he ought to have appeared may either proceed to hear and determine *ex parte*, or may issue their warrant for apprehending such person, and bringing him before them; provided always, that the prosecution for any offence punishable on summary conviction, by virtue of this Act, shall be commenced within three calendar months after the commission of the offence, and not otherwise.

Such prosecutions to be commenced within three months.

Sect. 37. That every sum which by any justice of the peace shall be adjudged to be paid for any offence against this Act, shall be paid to the receiver appointed under this Act, to be by him added to and applied as part of the funds for the purposes of the police under this Act, and no person, although liable to the payment of money for the maintenance of the police under this Act, shall, by reason thereof, or by reason of the application of any penalty to the use of the police funds, be deemed to be an incompetent

Sums adjudged by justices, to be paid to receiver, &c.

witness before any court, or justice or justices of the peace, in any proceeding whatever for any offence against this Act, or in any matter relating to the money to be raised for the maintenance of the police, or in any other matter mentioned in this Act; and no justice of the peace shall be disabled from acting in the execution of this Act by reason of his being liable to the payment of any such money.

Payment of
fines on con-
viction.

Sect. 38. That the justices of the peace, by whom any person shall be convicted and adjudged to pay any sum of money for any offence against this Act, may adjudge that such person shall pay the same, either immediately or within such period as they shall think fit; and that in default of payment at the time appointed, he shall be imprisoned in the common gaol or house of correction for any term not exceeding two calendar months, where the sum to be paid shall not exceed five pounds, and for any term not exceeding four calendar months, where the sum shall not exceed ten pounds, and for any term not exceeding six calendar months in any other case; the imprisonment to cease in each of the cases aforesaid upon payment of the sum due.

Imprison-
ment in de-
fault.

Form of con-
viction.

Sect. 39 prescribes the form of conviction in cases where persons are convicted before justices of offences against this Act.

Informalities
in warrants,
&c.

Sect. 40. That no conviction, order, warrant, &c. shall be quashed for want of form, or be removed by *certiorari*, &c.

Protection of
officers.

Sect. 41 makes provisions for the protection of persons acting in the execution of this Act.

SCHEDULE to which the Act refers.

Schedule.

A List of Parishes, Townships, Precincts, and Places referred to by the Act as constituting "The Metropolitan Police District."

COUNTY OF MIDDLESEX.

City and Liberties of Westminster.

The parishes of St. Margaret and St. John the Evangelist.

The parish of St. Martin in the Fields.

The parish of St. George, Hanover Square.

The parish of St. James.

The parish of St. Mary-le-Strand, as well as the liberty of Westminster, within the Duchy liberty.

The parish of St. Clement Danes, as well within the liberties of Westminster as within the Duchy liberty.

The parish of St. Paul, Covent Garden.

The parish of St. Ann, in the liberty of Westminster.

Whitehall Gardens, whether the same be parochial or extra-parochial.

Whitehall, whether the same be parochial or extra-parochial.

Richmond Terrace, whether the same be parochial or extra-parochial.

The Close of the Collegiate Church of St. Peter.

Holborn Division.

The parishes of St. Giles in the Fields, and St. George, Bloomsbury.

The parishes of St. Andrew, Holborn, and St. George the Martyr.

The liberty of Saffron Hill, Hatton Garden, and Ely Rents.

The liberty of the Rolls.

The parish of St. Pancras.

The parish of St. John, Hampstead.

The parish of St. Mary-le-bone.

The parish of Paddington.

The precinct of the Savoy.

Finsbury Division.

The parish of St. Luke.

The liberty of Glass-house Yard.

The parish of St. Sepulchre.

The parish of St. James, Clerkenwell, including both districts of St. James and St. John.

The parish of St. Mary, Islington.

CONSTABLES (NEW POLICE.)

The parish of St. Mary, Stoke Newington.
The Charter House.

Tower Division.

The parish of St. Mary, Whitechapel.
The parish of Christchurch.
The parish of St. Leonard, Shoreditch.
The liberty of Norton Folgate.
The parish of St. John, Hackney.
The parish of St. Matthew, Bethnal Green.
The hamlet of Mile End Old Town.
The hamlet of Mile End New Town.
The parish of St. Mary Stratford, Bow.
The parish of Bromley, St. Leonard.
The parish of All Saints, Poplar.
The parish of St. Ann, Limehouse.
The hamlet of Ratcliffe.
The parish of St. Paul, Shadwell.
The parish of St. George in the East.
The parish of St. John, Wapping.
The liberty of East Smithfield.
The precinct of St. Catherine.

The liberty of His Majesty's Tower of London, consisting of

The liberty of the Old Artillery Ground.
The parish of Trinity, Minories.
The Old Tower precinct.
The precinct of the Tower within.
The precinct of Wellclose.

Kensington Division.

The parish of Kensington.
The parish of St. Luke, Chelsea.
The parish of Fulham.
The hamlet of Hammersmith.
The parish of Chiswick.
The parish of Ealing.
The parish of Acton.

Brentford Division.

The township of New Brentford.

Extra-parochial Places.

Lincoln's Inn.

Gray's Inn.

Staple's Inn.

That part of Furnival's Inn in the county of Middlesex.

Ely Place.

KENT.

The parish of St. Paul, Deptford.

The parish of St. Nicholas, Deptford.

The parish of Greenwich.

SURREY.

The parish of Barnes.

The parish of Battersea.

The hamlet of Penge.

The parish of Bermondsey.

The parish of Clapham.

The parish of Lambeth.

The parish of Newington.

The parish of Putney.

The parish of Rotherhithe.

The parish of Streatham.

The parish of Tooting.

The parish of Wandsworth.

The parish of Christchurch.

Clink liberty.

The hamlet of Hatcham, in the parish of Deptford.

BOROUGH OF SOUTHWARK.

The parish of St. George.

The parish of St. Saviour.

The parish of St. John.

The parish of St. Olave.

The parish of St. Thomas.

10 Geo. 4. c. 45. By a subsequent statute, 10 Geo. 4. c. 45. s. 2. it is enacted, that, "in case of the establishment of a new police office for the administration of the police, in and near the metropolis, it may be expedient that the horse and foot patrol, now acting under the orders of the chief magistrate of the public office in Bow-street, should be placed under the orders of such new police office; and be it therefore enacted, that it shall be lawful for one of his Majesty's principal secretaries of state to direct that such horse and foot patrol shall be under the orders of the justice of the new police office, when the same shall be established; and that any of such justices shall have power to administer to all persons who now do or hereafter may belong to such horse and foot patrol, an oath to the same effect as the chief magistrate of the offices in Bow-street is empowered to administer; and the persons taking such oath shall have power to act as constables in the counties and places mentioned in the said last-mentioned act, and shall, in such counties and places, have all such powers, authorities, privileges, and advantages, as any constable now has, or hereafter may have, within his constablewick; and it shall be lawful for such principal secretary of state to direct that the receiver appointed under the recited act of the third year of this reign shall, out of the monies issued to him out of the consolidated fund, pay over in each year to such person as may be appointed receiver of monies applicable to the purposes of such new police, such sum of money as may now by law be applied to the maintenance of the said horse and foot patrol; the same to be hereafter applied towards defraying the charges and expenses of the said horse and foot patrol, after the same shall be placed under the orders of such new police office."

Power to place horse and foot patrol under the orders of the new police office.

In which case monies now applied for such patrol to be paid to receiver.

Application of penalties.

Sect. 3. And whereas it is expedient to remove all doubts respecting the application of penalties and forfeitures recovered before any justice or justices at any of the offices mentioned in the said act in the third year of this reign; be it therefore enacted, that where, by act or acts, any penalties or forfeit-

ures, or shares of penalties or forfeitures, are or shall be recoverable in a summary manner before any justice or justices of the peace, and by such act or acts respectively the same are or shall be limited and made payable to his Majesty, or to any body corporate, or to any person or persons whatsoever, save and except the informer who shall sue for the same, or any party aggrieved; in any such case, the same, if recovered or adjudged before any of the justices at any of the said offices, shall, notwithstanding any thing in such act or acts respectively contained, be recovered for, and adjudged to be paid to, the receiver for the time being mentioned in the said act, in the third year in this reign, to be by him applied for the purposes of the said act; and the same shall not, in any case, be recovered by, or adjudged to be paid to, any person other than the said receiver, unless such person be the informer or the party aggrieved; and each of the said justices at the said offices, and their clerks, and the said receiver, are hereby released and indemnified from all claims and demands, except those of his Majesty, in respect of any penalties or forfeitures, which, before the passing of this act, shall have been received at any of the said offices, and claimed and retained for on behalf of the said receiver.

County Rate.

There are many charges to which parishes are justly liable, as forming parts of a county, for which separate rates were formerly made. The inconvenience of this practice originated the statute of 12 Geo. 2. c. 29. which provided for a county rate, as a general fund, under the direction of the county magistrates. By the 12 Geo. 2. c. 29. justices of peace at their quarter sessions (and by 13 Geo. 2. c. 18, justices of liberties and franchises not subject to the county commissioners,) may make one general rate, in lieu of all former distinct rates, which shall be assessed on every parish, &c. and collected and paid by the high constables of hundreds to treasurers

Origin of the
County Rate.

How to be
made.

appointed by the justices; which money shall be deemed the public stock, and be laid out in repairing of bridges, gaols, or houses of correction, on presentment made by the grand jury at the assizes or quarter sessions of their wanting reparation.

Its purposes

Besides the reparation of bridges, gaols, &c. the county rate is now applicable, under particular statutes, to numerous purposes; as paying a moiety of expenses for prosecuting a master for ill-treatment of his apprentice (32 Geo. 3. c. 57.); carrying sea apprentice to port (2 and 3 Ann); the coroner's fee, and travelling expenses (25 Geo. 2. c. 29.); relief of prisoners in county gaol (14 Eliz. c. 5.); salary of chaplain of county gaol and house of correction (4 Geo. 4. c. 64.); carrying prisoners thither, setting them to work, and attending to their health (*Ibid.*; 14 Geo. 3. c. 59, and 27 Geo. 2. c. 3.); fees of gaolers, &c. on acquittal of prisoners; salary of the master of the house of correction; relief of insolvent and other prisoners; expenses of lunatic asylums; allowance to examiners of weights and measures; of prosecuting vagrants, &c. &c.

By whom rate to be paid.

On the rate being made as aforesaid, the churchwardens and overseers are to pay the sums rated on their parishes, &c. within thirty days after demand made upon them in writing, or affixed by the high constable to the church door; and in default of payment, the same may be levied by distress and sale of the goods of such churchwardens and overseers. (12 Geo. 2. c. 29. s. 2.)

May be made whenever requisite.

By the 55 Geo. 3. c. 51. s. 1. the justices in sessions are empowered to make a fair and equal county rate whenever circumstances shall require it; but the 14th section gives the power of appeal.

Curate.

Curate, what.

The word curate is now commonly understood as signifying a clergyman who exercises the spiritual office in a parish *under the rector or vicar*. (1 *Hen. Black.* 424.)

Of two kinds;

Curates are of two kinds, *temporary* and *per-*

petual; the former employed under the rector or vicar, as assistant or substitute during his absence, either in the parish church, or a chapel of ease thereto; and the latter, being appointed to officiate by the impropriator, in a parish where there is neither rector nor vicar. (*Steer*, p. 69.)

The general law relating to curates is irrelevant to the objects of this work.

Disorderly Houses.

Disorderly houses treated of in the law books are of three kinds; namely, houses kept for music, dancing, or dramatic exhibitions, without being duly licensed, gaming-houses, and bawdy-houses.

With regard to theatres, or other places of public entertainment, in and near London, they are, in all cases in which they are not sanctioned by letters patent, or by license from the Crown or the Lord Chamberlain, placed under the control of the magistrates, by whom licenses are to be granted annually, and by whom the same may be revoked. (25 Geo. 2. c. 36. and 28 Geo. 2. c. 19.)

And any house, room, garden, or other place, kept for public dancing, music, or other public entertainment of the like kind, in London and Westminster, or within 20 miles thereof, without such licenses (unless sanctioned by patent, &c. as aforesaid), shall be deemed a disorderly house or place, and the keeper shall forfeit 100*l.* with costs, and be otherwise punishable, as in cases of disorderly houses. (28 Geo. 2. c. 19. s. 2.)

And any constable, or other person, with the warrant of one justice may enter such house or place, and seize every person found therein, to be dealt with according to law. (*Ibid.*)

Houses or rooms where persons of both sexes meet for the purpose of dancing, paying for their admission, are within the statute. (*Clark v. Searle*. 1 *Esp.* 25.)

It is not necessary that the tenant or proprietor

should take money for admission ; for, in the case of a publican who allowed his house to be used in this way every Monday evening, and the admission money went to the use of a dancing-master, the landlord was held liable. (4 *Esp.* 186.)

The regular exhibition of musical performances in a room, that is not kept or devoted wholly to that purpose, is within the statute, (2 *Esp.* 592); but the temporary use of a room in a public-house, for the purpose of dancing on a particular festival or occasion does not require a license, (5 *Esp.* 128); neither is a room kept by a dancing-master for the instruction of his scholars and subscribers deemed within the Act, provided persons be not admitted indiscriminately. (2 *Esp.* 722.)

Gaming.

Where it shall be proved before any justice of the peace, that any person hath used unlawful *games*, contrary to 33 Hen. 8. c. 9. the justices may commit such offender to prison, till he enter into a recognizance that he shall not from thenceforth, at any time to come, play at an unlawful game. (2 Geo. 2. c. 28.)

For better preventing excessive and deceitful *gaming*, faro, basset, and hazard, are declared to be lotteries by cards or dice ; and persons setting up these *games* are liable to a penalty of 200*l.* And every person who shall be an adventurer, or play or stake therein, forfeits 50*l.* Likewise the sale of any house, plate, &c. in the way of lottery by cards, &c. is adjudged void, and the things to be forfeited to any person who shall sue for the same. (12 Geo. 2. c. 28.) The *game* of passage, and all other *games* with one or more dice, or any thing in that nature, having figures or numbers thereon (backgammon and *games* now played with those tables only excepted), shall be deemed games or lottery by dice, within the 12 Geo. 2. c. 28 ; and such as keep any office or table for the said *game*, &c. or play thereat, are subject to the penalties in that Act. (13 Geo. 2. c. 19.)

Gaming-
houses.

Playing at, or keeping any house or place for playing at, the *game* of roulette, or any other *game*

with cards or dice already prohibited, incurs the penalties in 12 Geo. 2. c. 28. Persons losing 10*l.* and paying the same, may sue the winner, and recover the same, with costs; and on a bill in equity the court may decree the same to be paid. The persons who have jurisdiction to determine information on the statute against *gaming*, may summon witnesses, who on refusing to appear and give evidence shall forfeit 50*l.* No privilege of parliament shall be allowed on prosecutions for keeping gaming-houses. Persons *losing* or *winning* 10*l.* at one time, or 20*l.* in 24 hours, may be indicted and fined five times the value, to be paid to the poor.

But by 30 Geo. 1. c. 24. if any person licensed to sell liquors shall knowingly suffer any *gaming*, in their house or grounds, with cards, dice, draughts, shuffle-boards, mississippi, or billiard-tables, skittles, or nine-pins, by any *journeyman*, labourers, servants, or apprentices, he shall forfeit 40*s.* for the first, and 10*l.* for every subsequent offence, three-fourths to the poor, and one-fourth to the informer. Any journeyman, &c. so gaming, shall forfeit from 20*s.* to 5*s.* No *certiorari* to be granted, but appeal given to the next sessions; and persons punished by this Act, not to be punished by any other law.

From the statutes cited, and many decisions of the courts, it would seem that the playing at cards, dice, &c. when practised innocently and for recreation, is not unlawful. (2 *Vent.* 175.) But the keeping of a common *gaming-house* has always been considered an offence at common law, as a public nuisance. (1 *Hawk. P. C. c.* 75; 10 *Mod.* 336.) The usual mode of proceeding against such houses is by indictment, and if it be proved that persons there assembled were behaving disorderly, it will be sufficient. (1 *Russ.* 302.) A married woman may be indicted for the offence. (*Ibid.* 299.)

The keeping of a bawdy-house is deemed by the law a common nuisance, not only from its endangering the public peace, by drawing together dissolute and debauched persons, and promoting quarrels, but also on account of its tendency to corrupt the man-

Bawdy-
houses.

ners of the people, by an open profession of lewdness. (3 *Inst.* 205 ; 1 *Hawk. P. C.* c. 74.)

A lodger who keeps a single room only for the accommodation of lewd people, is indictable for keeping a *house* for the same purposes. (1 *Salk.* 382.)

A wife may be indicted with her husband for this offence, it being in its nature joint and several. (*Ibid.* 384.)

But in indictments for keeping a house of ill fame, it must be expressly alleged to be such a house, and that the party knew it ; suspicion only will not suffice. (*Poph.* 208.)

A man may be indicted for keeping bad women in his own house. (1 *Hawk. P. C.* c. 61.) And persons resorting to a house of ill-fame are punishable, and may be bound over to good behaviour.

A constable upon information that a man or woman is gone to a lewd house, for the purpose of committing fornication or adultery, may, if he finds them together, carry them before a justice without any warrant, who may bind them over to the sessions. (*Dalt.* 214.)

By 25 Geo. 2. c. 36. made perpetual by 28 Geo. 2. c. 19. if two inhabitants paying scot and lot shall give notice to a constable of any person keeping a bawdy-house, the constable shall go with them before a justice of the peace, and shall (upon such inhabitants making oath that they believe the contents of such notice to be true, and entering into a recognizance of 20*l.* each to give material evidence of the offence) enter into a cognizance of 30*l.* to prosecute with effect such persons for such offence at the next sessions. The constable shall be paid his reasonable expenses by the overseers of the poor, to be ascertained by two justices ; and if the offender be convicted, the overseers shall pay to the two inhabitants 10*l.* each. On the constable entering into such recognizance as aforesaid, the justice shall bind over the person accused to the next sessions, and if he shall think proper, demand security for such person's behaviour in the mean time. A constable neglecting his duty forfeits 20*l.* Any person appearing as

master or mistress, or as having the care or management of any bawdy-house, shall be deemed the keeper thereof, and liable to be punished as such.

DISTRESS,—See RENT, POOR'S RATE, &c.

EJECTMENT,—See RENT.

FUNERALS,—See BURIALS.

GOODS, &c. OF THE CHURCH,—See CHURCHWARDEN.

GOVERNOR OF THE POOR-HOUSE,—See GUARDIAN, &c.

Guardians of the Poor, Visitor, Treasurer, and Governor of the Work-house.

By the 22 Geo. 3. c. 83. (amended by 33 Geo. 3. c. 35.) the provisions of which are only to extend to such parishes as shall voluntarily adopt them in the manner prescribed, it is enacted, that whenever two-thirds in number and value of the owners or occupiers within any parish, who shall actually attend any public meeting holden under the directions of the Act, shall signify their desire to adopt its provisions, and shall at such meeting nominate to the justices three persons for *guardians*, and three others for *governors of the poor-house*, and fix salaries to be paid to them respectively, (procuring the consent in writing of two justices to such agreement and salaries) they shall thenceforth be entitled to the benefits of the act.

And whenever such two-thirds in number and value of owners or occupiers shall express their desire that *two of the three persons so nominated* may be appointed guardians of the poor, the justices may appoint two. (33 Geo. 3. c. 35. s. 2.) And, in like manner, where it shall be deemed expedient, *four or more* fit persons may be so nominated to the justices, who are empowered to appoint *such and so many of them* to be guardians, as they may think fit. (41 Geo. 3. c. 9. s. 1.)

22 Geo. 3. c. 83.
Guardians,
&c. when and
how to be ap-
pointed.

Two or more
guardians
may be ap-
pointed.

Notice of
meeting.

The notice for convening the public meetings must be given in the church or chapel on three successive Sundays before the time of such meeting, immediately after divine service, or on such of the said Sundays as service shall be performed there; and it shall also be affixed to the church or chapel door fifteen days at least before the day appointed for the meeting.

Powers of
guardians
when ap-
pointed.

And where guardians shall be so appointed, neither the churchwardens nor overseers can legally intermeddle in the management of the poor of such parishes, the guardians being invested with all the powers of overseers, *except as to making and collecting rates*, which, for the maintenance, &c. of the poor, shall be made and collected by the churchwardens and overseers, but paid over, from time to time, to the guardians, as may be necessary for the expenses of the poor and poor-house. (22 Geo. 3. c. 83.)

United pa-
rishes.

Or, if two parishes or places are united, they shall pay over their *quotas* respectively to the treasurer of such united district, or permit such treasurer to draw on them, specifying in the receipt or draft the purposes for which the money is to be applied. (*Ibid.*)

Visitors may
be chosen in
like manner.

In like manner as aforesaid, if two-thirds in number and value in a single parish be desirous of having a *visitor*, they are empowered to nominate three persons, fit in character and fortune for the office. And within three days after such nomination shall be laid before the justices, they shall appoint one of such persons to be visitor; if he refuse, then another; and if he refuse, then the third; and if all of them refuse or decline, then the guardians shall serve monthly, in rotation, in the capacity of visitor, subject to the controul of the justices. (22 Geo. 3. c. 83.)

In united parishes, the guardians thereof must, previously to such election, &c. produce to two justices the agreement of union, under 41 Geo. 3.

The duties of
visitor.

The duty of the visitor is to superintend the poor-house, and to adjust all questions concerning the persons to be sent thither, to see the regulations of the house enforced, and to settle accounts between guardian and treasurer; and the governors, guardians,

and treasurer are to observe his directions in all these matters. (22 Geo. 3. c. 83.)

Such visitor (if he be not a guardian acting as visitor in rotation,) may appoint a *deputy* to act in his absence, who shall make report, and be accountable to him for all matters entrusted to his charge. May act by deputy.

And such visitor, or his deputy, shall be exempt from all other parochial offices, so long as he continues to act in that capacity, as well as from serving on juries. (*Ibid.*) Exemption from other offices.

And from the body of guardians of any united parish, one shall be nominated by themselves to act as *treasurer*, and the justices are authorized to appoint the individual so selected, or any *other* of such guardians whom they may think more fit. (*Ibid.* s. 12.) Treasurer of poor-house, from whom to be appointed.

And such treasurer so appointed shall give security for duly accounting, keep accounts, pay bills, lay his accounts before the guardians at every meeting, and shall, once a year, fourteen days before Michaelmas quarter sessions, make out an account of the expenses, the number of poor in the house, their age and sex, stating how they have been employed, and the amount of their earnings, during the preceding year. And such accounts shall be laid before the visitor for his approval, after which they shall be transmitted to the clerk of the peace, or town-clerk, to be by him laid before the sessions. And such treasurer shall be allowed such annual sum, *not exceeding 10*l.**, as the visitor, if not a guardian, shall think fit, and if no visitor, then as two justices shall appoint. (*Ibid.*) Security, &c. His duties. His salary.

And by the 41 Geo. 3. c. 9. s. 3. it is enacted that two justices, upon the application of two-thirds of owners in value, &c. may appoint a treasurer for the poor-house of a single parish, with the like salary.

And, upon application by two persons who signed the agreement prescribed by stat. 22 Geo. 3. two or more magistrates may appoint a *governor* for each poor-house, who shall be removable for misbehaviour or incapacity by the visitor, with the consent of a Governor of Poor-house.

majority of the guardians, or if a guardian act as visitor in manner before-mentioned, then by two justices within the limit.

Powers and Duties.

As to the powers of the governor, or master of a workhouse, he is prohibited from inflicting corporal punishment on adults under his care, be the offence ever so aggravated, and he cannot confine them for a longer period than twenty-four hours, or till they can be taken before a magistrate (54 Geo. 3. c. 170); nor can he confine any *sane* person with chains. (56 Geo. 3. c. 129.)

It is the duty of the governor to enforce obedience to the rules of the poor-house, which rules he shall cause to be printed, and fixed up in some conspicuous part of the building.

Headborough.

Headborough, what anciently.

This title anciently designated him who was the *head* of what was termed the *frank-pledge* in *boroughs*. The frank-pledge was a surety for the behaviour of freemen; it having been a custom in this kingdom, borrowed from the Lombards, that, for the preservation of the public peace, every free-born man, at the age of 14, (religious persons, &c. excepted) should give security for his truth towards the king and his subjects, or be committed to prison; whereupon a certain number of neighbours usually became bound for one another, to see each man of their pledge forthcoming at all times, or to answer the transgression of any one who should be *failing*. Whenever any one offended, it was forthwith inquired of what *pledge* he was, and then those of the same pledge either produced the offender within 31 days, or made satisfaction for his offence. (4 *Inst.*)

What now.

As the law now requires that every man shall be answerable for his own transgressions, the office of headborough, in its original purpose, is obsolete; but the term is still used in many places to denote a kind of constable, and sometimes as a tithing-man, the person exercising the office being vested sometimes with peculiar and limited duties, and sometimes

with the full powers of constable ; frequently acting with the constable, or as his deputy in his absence.

Highways—Highway Rates.

The laws relating to highways are so complicated and voluminous, as to defy lucid condensation within the limits of this dictionary. To convey satisfactory information, therefore, is not pretended to : all that will be attempted is to proffer such as cannot mislead.

All parishes are liable to the duty of repairing the highways which pass through them ; while that of making new roads and widening old ones is provided for by the General Highway Act, 13 Geo. 3. c. 78. or by turnpike Acts, or local Acts passed from time to time.

Parishes liable to repair highways.

The duty of repairing highways in a parish rests *primâ facie* on the whole parish, and not on any particular part. (5 *Term Rep.* 498.)

The whole parish liable.

If highways be suffered to decay, or necessary repairs be neglected, parishes may be prosecuted either by indictment, information, or presentment of a judge or justice of the peace. Of these, indictment is the most usual mode of proceeding.

May be prosecuted for neglect.

The surveyor of the highways is the ministerial officer to execute the enactments of the various statutes for the repair and preservation of roads ; but the magistrates of counties have high powers vested in them, where material changes, &c. are contemplated.

For the appointment of a surveyor, a meeting of the constables, &c. churchwardens, and householders assessed to the parochial rates, is held annually on the 22d of September (or the following day if a Sunday), and out of ten persons marked by them in a list as qualified¹, one is usually appointed by the

Appointment, &c. of surveyor of highways.

Lists.

¹ The qualification is, an estate of land, &c. within the parish, &c. in their own right, or in right of their wives, of 10*l.* per annum, or personal estate of 100*l.* value, or an occupier of houses, &c. of the yearly value of 30*l.*

justices, who are required to hold a special sessions for that purpose. (13 Geo. 3. c. 78.)

Forfeit for non-acceptance of office.

Any person refusing to accept the office, after being duly and legally appointed, to forfeit 5*l.* if his name shall have been in the list presented to the justices; and if not, then 50*s.* (*Ibid.*) Justices may appoint persons not in the list. (7 Term Rep. 169.)

Service for one year exempts for three.

No person appointed, and who shall serve the office for one year, to be liable to be appointed again for the same parish, &c. for three years. (13 Geo. 3. c. 78.)

Powers of justices, if no list be returned to them.

But if no list be returned to the justices, or if the persons appointed by them refuse to serve, the said justices may nominate some other person, and appoint him a salary out of the forfeitures, compositions, &c. to be raised within the parish, as they shall think fit, not exceeding one-eighth part of what shall have been raised by an assessment of 6*d.* in the pound, for the use of the highways in such parish, &c. and observing the same restriction as near as they can, from the best information they shall be able to get of the probable amount of such assessment; and the said justices may require the constables, &c. and the surveyor of such parish, &c. or any of them, to return to the said justices, at any such time and place as they shall appoint, an account in writing of the sum which such assessment of 6*d.* in the pound hath raised, or will in their opinion raise. (*Ibid.*)

Fine for neglect to return lists, &c.

If the constables, headboroughs, tithingmen, churchwardens, surveyors, and householders, shall neglect or refuse to make such list, or if the constable shall not return such list when made, and a duplicate thereof, and give notices, and serve the necessary warrants, or if such constable, &c. and surveyor, or any of them, shall neglect to return such account of the amount of assessment when so required, he shall forfeit 40*s.* (*Ibid.*)

Salary of surveyors in cities and towns corporate, &c.

In cities, boroughs, and towns corporate, the justices shall not allow any salary for any surveyor, other than such as shall be agreed on by two parts out of three of the persons assembled in the respec-

tive parish, &c. within such city, borough, or town corporate.

In all cases where the justices, upon neglect or refusal of the person so appointed surveyor to accept the said office, shall appoint any other with a salary, they shall appoint one *substantial inhabitant* of such parish, &c. for *assistant* to such surveyor, until the next annual appointment of surveyors; and if the person so appointed assistant shall refuse to accept the office, he shall forfeit 50s. (*Ibid.*)

Assistant
surveyor.

Fine for
refusing the
office.

And in that case, they shall appoint any other substantial inhabitant as such assistant, and if such second appointed assistant shall refuse to accept that office, he shall in like manner forfeit 50s. (*Ibid.*)

And in such case they may appoint a third person to be such assistant, who shall be entitled to the last mentioned forfeitures, and also to such further salary as the said justices shall think proper. And no person so appointed assistant for one year shall be liable to be appointed assistant again for such parish, &c. within three years next following, without his consent. (*Ibid.*)

The surveyor of any parish, &c. who shall not reside therein, and shall be appointed with a salary, shall, if required by the churchwarden, overseer, or any principal inhabitant, at the time of his appointment, or within 14 days after, give a bond, without stamp, to some proper person within the parish, &c. to be nominated by such justices, with sufficient surety. (*Ibid.*)

Non-resident
surveyor to
give bond, if
required.

The said assistant shall, on request, assist the surveyor in calling in and attending the performance of the statute duty; in collecting the compositions, fines, penalties, and forfeitures; in making and collecting the assessments; in making out and serving notices; and in such other matters as shall be reasonably required of him by the surveyor in the execution of his office; and shall account and pay to the surveyor, or his order, from time to time, all the money that shall come to his hands, on pain of forfeiting double. And if he shall wilfully make default in the performance

Assistant's
duties.

Penalty for
wilful
default.

of any of the duty required of him, he shall forfeit not exceeding 5*l.* nor less than 40*s.* (*Ibid.* s. 4.)

Abstract of
the Act to be
delivered to
every sur-
veyor.

The justices shall at every special sessions, to be holden in the week next after the *Michaelmas* quarter sessions, cause to be delivered a printed abstract of the most material parts of this Act to every surveyor to be then appointed by them. (*Ibid.* s. 70.)

Repair of
particular
streets, by
statute.

Where it is enacted by a statute, that the paving of a particular street shall be under the care of commissioners, and that a fund be applied for that purpose; and another statute which was passed for paving the streets of the parish, contained a clause that it should not extend to the particular street; it was held, that the inhabitants of the parish are not exempted from their common law liability to keep the street in repair; that the duty of repairing might be imposed upon others, and the parish be still liable; and that the parish were under the obligation in the first instance of seeing that the street was properly paved, and might seek a remedy against the commissioners. (*Rex v. St. George's, Hanover Square.* 3 Campb. 222.)

Agreement
will not ex-
onerate parish.

No agreement can exonerate a parish from their liability to repair by the common law. (*Rex v. the Mayor of Liverpool.* 3 East, 86.)

Highway in
two parishes.

A highway lying in two parishes, two justices may determine what parts shall be repaired by each. 34 Geo. 3. c. 64. s. 1.

Surveyor to
give notice of
highways out
of repair,
which ought
to be repaired
by particular
persons, &c.

The surveyor shall from time to time give information upon oath to the justices, or two of them, of all highways, bridges, causeways, or pavements upon such highways, as are out of repair, and which ought to be repaired by a person or persons, bodies politic or corporate, by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever; and the said justices shall limit a time for repairing the same: of which notice shall be given by the surveyor to the occupiers of any land, &c. liable to such repairs, or to such other person or persons, bodies politic or corporate, as are chargeable with the same; and if such repairs shall not be effec-

Proceedings
of justices
thereon.

tually made within the time so limited, the said justices shall present such highways, bridges, causeways, or pavements so out of repair, together with the person or persons, bodies politic or corporate, liable to repair the same, at the next general quarter sessions for the limit wherein such highway shall lie; and the justices there, if they see cause, may direct the prosecution to be carried on at the general expense of such limit, and to be paid out of the general rates. (13 Geo. 3. c. 78. s. 23.)

The surveyor, with the inhabitants and occupiers of lands, tenements, &c. shall at proper seasons in every year use their endeavours for the repair of the highways, and shall be chargeable thereto as follows:

Every person keeping a waggon, cart, wain, plough, or tumbrel, and three or more horses or beasts of draught used to draw the same, shall be deemed to keep a team, draught, or plough, and be liable to perform statute duty with the same, in the parish, township, or place, where he resides, and shall, six days in every year, (if necessary) to be computed from Michaelmas to Michaelmas, send on every day, and at every place, to be appointed by the surveyor for amending the highways in such parish, &c. one wain, cart, or carriage, furnished after the custom of the country with oxen, horses, or other cattle, and all other necessities fit to carry things for that purpose, and also two able men with the same; which duty so performed shall excuse every such person from his duty in such parish, &c. in respect of all lands, tenements, &c. not exceeding the annual value of 50*l*. (34 Geo. 3. c. 74. s. 4.)

Every person keeping such team, draught, or plough, and occupying in the same parish, &c. lands, tenements, &c. of the yearly value of 50*l*. over and beyond the yearly value of 50*l*. in respect whereof such team duty shall be performed; and every such person occupying lands, tenements, &c. of the yearly value of 50*l*. in any *other* parish, &c. besides that in which he resides; and every *other* person, not keeping a team, draught, or plough, but occupying lands, tenements, woods, tithes, or hereditaments, in any

Proportions
of labour for
repairs, by
statute duty.

For occupiers
of 50*l*. per
annum.

Occupiers of
50*l*. per
annum be-
yond the
above 50*l*.

Or of 50*l*. per
annum more
in another
parish.

Other occu-
piers, not
keeping
teams, &c.

parish, &c. ; shall in like manner respectively, and for the same number of days, find and send one wain, cart, or carriage, furnished with not less than three horses, or four oxen and one horse, or two oxen and two horses, and two able men to each wain, cart, or carriage ; and in like manner for *every 50l. a year* respectively which any such person shall further occupy in any such parish, &c. ; such carts, &c. to be employed by the surveyor in repairing the highways within the parish, &c. where such lands, &c. shall lie. (*Ibid.* s. 4.)

Occupiers
under the
value of 50l.
&c.

Every person who shall not keep a team, draught, or plough, but shall occupy lands, tenements, &c. under the yearly value of 50l. in the parish, &c. where he resides, or in any *other* parish, township, or place ; and every person keeping a team, draught, or plough, and occupying lands, &c. under the yearly value of 50l. in any other parish, township, or place, than that wherein he resides ; shall contribute to repair the highways, and pay to the surveyor in lieu of such duty the sums following : viz.—For every 20s. of the annual value of such lands, &c. 1d. for every day's statute duty which shall be required by the surveyor ; and in like manner 1d. for every 20s. of the annual value of such lands, &c. which he shall occupy, above the annual value of 50l. and less than 100l. ; and so for " every 20s. that each progressive and intermediate annual value of 20s. which he shall so occupy shall fall short of the farther increase of 50l. in every parish, township, or place, where any such lands, &c. shall respectively lie, for every day's statute duty so to be required as aforesaid." (*Ibid.*)

Occupiers
under 30l. per
annum keep-
ing a team,
&c.

No person keeping such team, &c. and performing duty as aforesaid, and not occupying lands, &c. within the parish or place, of the yearly value of 30l. shall be obliged to send more than *one labourer* with such team, &c. (*Ibid.* s. 4.)

Sums to be
paid to the
surveyor as
compositions.

The said several sums to be considered as compositions, and to be paid to the surveyor at the time the compositions are to be paid, or within 10 days after ; or in default of payment the surveyor shall apply to a justice, who shall summon the defaulter

to appear at some special or petty sessions, to show cause why he refused or neglected to pay; and in default of appearance, or if on appearance he shall not make it appear that he is poor and indigent, and as such an object deserving relief, such money shall be levied by distress. And when, on application, the justices shall discharge a poor and indigent person from the payment of such rate or composition money, such person shall at the same time be discharged from all expenses in consequence thereof. (*Ibid.*)

Persons wholly gaining their livelihood by the wages of daily labour, and occupying rateable tenements, who by reason of age, sickness, a numerous family, or misfortune, may be in poor and indigent circumstances, may be exempted by justices from all rates, assessments, or composition. (*Ibid.* s. 5.)

Poor persons may be exempted.

Every person who shall not keep a team, draught, or plough, but shall keep a cart or carts, and one or two horses or beasts of draught only, used to draw such carts, shall be obliged to perform statute duty with such cart or carts, horse or horses, &c. and one labourer to attend each cart, or to pay for the lands, tenements, &c. which he shall occupy, according to the rate herein-after mentioned. (*Ibid.* s. 2.)

Persons keeping carts, with one or two horses only.

And every person who shall keep a coach, post-chaise, chair, or other wheel carriage, and not keep a team, draught, or plough, nor occupy lands, &c. of 50*l.* a year, in the parish, &c. wherein he resides, shall pay to the surveyor 1*s.* in respect of every day's statute duty for every horse which he shall draw in any such carriage, or shall pay according to the value of the lands, &c. he shall occupy. (*Ibid.*)

Persons keeping a coach, or chaise, &c.

If teams, draughts, or ploughs, shall not be thought needful by the surveyor on any day, then every person who shall have sent such team, &c. may, on notice, send unto the said work for every one so spared, three able men; or pay 4*s.* 6*d.* in lieu thereof, at the option of the surveyor.

Labourers instead of teams, &c.

Where two horses shall be sufficient for one cart, or where a stand cart with one horse shall be necessary, the surveyor may call upon any person liable

Surveyor may require part of a team, or a

waggon,
where neces-
sary.

to send a team, draught, or plough, who keeps a cart or carts, and three or more horses, to send such carts or horses, to perform his statute duty, as the surveyor shall find most convenient; and he shall allow every such stand cart and one horse as half a team, and every cart and two horses as two-thirds of a team. And if a waggon be necessary, the surveyor may require the duty to be performed with such waggon by any person who keeps one. (13 *Geo. 3. c. 78.*)

Compositions
in lieu of
labour.

In all cases in which it shall be made to appear to two or more justices, by the surveyors of the highway or of any turnpike road, that the maintenance and repair thereof can be more effectually carried on by a composition in money than by the performance of the statute duty in kind, they shall be at liberty to require such composition in money, in lieu of either the whole or part of the statute duty; and the justices, at their special sessions, in the week next after Michaelmas yearly, shall fix rates, as a composition in lieu of the teams, carts, horses, oxen, or labour, which such persons are bound, in the proportions now affixed by law, to provide or perform; which rates the said justices are required annually to make known at such special sessions, due regard being had to the actual wages of labour, and to the actual rate of hiring teams, draughts, ploughs, carts, horses, or oxen, in the parish, place, or district, in which the composition shall be required; and such composition shall be paid in the same manner, and within the same period, and subject to the same regulations and provisions, as are now established for enforcing the payment of compositions in lieu of statute duty. (54 *Geo. 3. c. 109. s. 4.*)

Rates to be
fixed by
justices.

Where the
whole com-
position shall
not be re-
quired.

Where the whole composition in money shall not be required in lieu of the whole of the duty in kind, such composition shall be demanded in fair and equal proportions from every person liable to pay the same, unless any of the said persons shall prefer to pay a composition for the whole of their statute duty, according to the rates fixed. (*Ibid.*)

In default of payment of compositions, the surveyor shall apply to a justice of the district, who shall summon the defaulter to appear at some petty or special sessions, at which two justices at least shall be present, to show cause why he refused or neglected to pay; and in default of appearance, or if on appearance he shall not make it appear to the satisfaction of the justices that he is poor and indigent, and as such an object deserving relief, such money shall be levied by distress. (34 Geo. 3. c. 74.)

Default in payment of compositions.

Justices may, on examination, discharge from such rates persons really poor and indigent, who wholly gain their livelihood by the wages of daily labour, and occupy rateable tenements, and who from age, sickness, a numerous family, or misfortune, may be deemed unable to pay. (*Ibid.*)

Poor persons may be relieved.

All persons liable under any of the provisions of 13 Geo. 3. c. 78. 34 Geo. 3. c. 74. and 44 Geo. 3. c. 52. to contribute to the repair of the highways by a payment of money in lieu of statute duty, shall contribute thereto, in lieu of every day's statute duty, for every twenty shillings of the actual annual value of lands, tenements, &c. which such person shall occupy in the parish, &c. where they reside, or in any other parish, &c. a sum equal to one fiftieth part of the sum fixed by the justices, as the composition of one day's labour of a cart, wain, or carriage, furnished with 3 horses and two able men, omitting any fractional part not amounting to one farthing; and all persons occupying more than 50%. per annum in the parish, &c. or in any other parish, &c. and less than 100%. per annum, shall contribute to the repairs of the highways in lieu of every day's statute duty for every 20s. of the actual annual value at the time of making the said assessment, of the lands, tenements, woods, tithes, and hereditaments, which such persons shall respectively occupy, over and above the said sum of 50%. per annum, and under 100%. a sum equal to one fiftieth part of the sum fixed by the said justices, at the time and in the manner by this Act directed, as the composition for one day's labour of a cart, wain, or carriage, fur-

Rates of composition progressive according to value of lands, &c. occupied.

nished with three horses, and two able men, omitting any fractional part of the said sum which does not amount to one farthing ; and so on progressively for every 20*s.* of the actual annual value of the lands, tenements, woods, tithes, and hereditaments which they shall respectively occupy over and beyond every additional fifty pounds per annum ; and the said sum or sums shall be paid in the same manner and within the same period, and subject to the same regulations and provisions, as are now by law established for enforcing the payment of composition in lieu of statute duty. (54 *Geo.* 3. c. 109. s. 5.)

Rates of composition for persons keeping a coach, &c.

Every person who shall keep a coach, post-chaise, chair, or other wheel carriage, and not keep a team, draught, or plough, nor occupy 50*l.* per annum in the parish, township, or place where he resides, shall pay to the surveyor or surveyors, in respect of every day's statute duty, for every horse which he or she shall use in drawing such carriage, such a sum as the justices shall, at the time and in manner by this act directed, fix as the composition for one day's work of a horse ; or shall, at the option of the surveyor or surveyors, pay in lieu of every day's statute duty, for every 20*s.* of the actual annual value of the lands, tenements, woods, tithes, and hereditaments, which he or she shall respectively occupy, a sum equal to one fiftieth part of the sum fixed by the justices, at the time and in the manner by this Act directed, as the composition for one day's labour of a wain, cart, or carriage, furnished with three horses and two able men, omitting any fractional part of the same sum which does not amount to one farthing ; and the said sum or sums shall be paid in the same manner, within the same period, and subject to the same regulations and provisions, as are now by law established for enforcing the payment of compositions in lieu of statute duty. (54 *Geo.* 3. c. 109. s. 6.)

Notice to be given of the time and place for compositions.

The surveyor, on some Sunday in November in every year, shall cause ten days' notice to be given in the church or chapel of the parish, &c. to be repeated on the subsequent Sunday, of the time and place for compositions ; and persons compounding

who shall then or within one calendar month after pay their composition, shall be discharged from the performance of statute duty. (13 Geo. 3. c. 78. s. 41.)

Where there are turnpike roads, a proportion of the composition is to be paid by the turnpike treasurer or surveyor. (*Ibid.* s. 44.)

In order to prevent as much as possible any inconvenience to persons liable to perform statute duty, the inhabitants of every parish, &c. at a vestry, or other public meeting under this Act, to appoint three months in every year within which no statute duty shall be performed; viz. one month in the spring to be called the seed month, one month in the summer for the hay harvest, and one month in the summer for the corn harvest; provided that notice in writing be given of the times so appointed to the surveyor of such parish, &c. and also the surveyor of every turnpike road lying within the same, within three days after such meeting, and fourteen days at least before the beginning of each such month. (*Ibid.* s. 43.)

The surveyor shall give or cause to be left at the house or usual abode of every person liable to perform statute duty or labour, at least four days' notice of the day, hour, and place, upon which each of the said day's duty shall be required; and every person omitting to find or send such wain, cart, or carriage, furnished as aforesaid, and able men with the same, or to perform the said duty as aforesaid, shall for default in sending such wain, cart, or carriage, with men, as aforesaid, forfeit 10s.; and for failing to send a cart with one horse and one man, 3s.; and for a cart with two horses and one man, 5s.; and for failing to perform such labour, or to pay such composition money, for every such failure, 1s. 6d.; (*Ibid.* s. 37.)

For reimbursing expenses for purchasing materials, and making satisfaction for damages for getting and carrying the same away, erecting guide posts, or other posts or stones, making or repairing trunks, tunnels, plats, bridges, or arches, for damages done

Where there are turnpike roads.

The months in the year may be exempted from performance of statute duty.

Notice for performing statute duty.

Assessment for expenses of materials, &c.

to lands by making new ditches and drains, and for the salary to be paid to the surveyor, upon application by the surveyor to the justices at a special sessions, and oath made of the sums he hath *bond fide* laid out, or which will be required, the said justices, or two of them, shall by their warrant cause an equal assessment to be made upon all occupiers of lands, tenements, &c. to be made and collected by such person or persons, and to be levied as after directed. (13 Geo. 3. c. 78.)

One year's assessment not to exceed 6d. in the pound.

No such assessment for any such purposes, in any *one year*, shall exceed the rate of 6d. in the pound of the yearly value. (*Ibid.*)

Justices may order an additional assessment.

If upon application of the surveyor to the justices at their general or quarter sessions, or at a special sessions for the highways, the said justices shall be fully satisfied by proof upon oath that the duty hath been performed, and the money applied and expended according to the directions of this Act, or shall be fully satisfied that the common highways, bridges, causeways, streets, or pavements, belonging to the parish, township, or place, are so far out of order that they cannot be sufficiently amended and repaired, paved, cleansed, and supported, by the means hereinbefore prescribed (notice being first given of such intended application at the church or chapel on some Sunday preceding such quarter or special sessions), in such case an equal assessment on all and every occupiers of lands, tenements, &c. within any such parish, &c. for the said purposes, may be made and collected by such person, as the said justices by their order shall direct. (*Ibid.* s. 45.)

Both assessments not to exceed 9d.

The said assessment, and the assessment hereinbefore authorized, for buying materials, making satisfaction for damages, &c. shall not together in *any one year* exceed the rate of 9d. in the pound of the yearly value. (*Ibid.* s. 46.)

Power of justices in certain cases to make a third assessment.

But if upon application of the surveyor of the highways of any parish, &c. to the justices of the peace at their general or quarter sessions, or at a special sessions for the highways, the said justices shall be fully satisfied that the common high-

ways, bridges, causeways, streets, or pavements, belonging to such parish, &c. cannot be sufficiently amended and supported by the means above prescribed, it shall be lawful for the said justices to direct an additional assessment (over and above all other assessments authorized to be made). (54 *Geo.* 3. c. 109. s. 1.)

Notice of such intended application shall be first proved before the said justices, upon the oath of the surveyor, to have been given at the church or chapel, on two Sundays preceding such general or quarter sessions, or special sessions for the highways; or, in townships, or places where there are no churches or chapels, to have been stuck up in writing in two or more conspicuous places within the said townships or places, for one week at least previous to such general or quarter sessions, or special sessions for the highways; or, in extra-parochial places, to have been given in writing to some of the principal inhabitants residing in such extra-parochial place, a week at least before such general or quarter sessions for the highways; in order that any person or persons liable to be rated to the assessment intended to be applied for, may attend at such general or quarter sessions, or special sessions, if they shall think fit, there to state any objections which he, she, or they, may have to the making or collecting of such assessment. (*Ibid.* s. 2.)

The said assessment shall not exceed the rate of 1s. 9d. in the pound on the actual value at the time of making such additional assessment. (*Ibid.* s. 3.)

If any person shall refuse or neglect to pay the sum assessed upon him within ten days after demand thereof made, the same shall be levied by the surveyor or any other person authorized by warrant of one justice, *by distress and sale*; and in default of distress, the justice may commit him to the common gaol, there to remain until he shall have paid the sum so assessed, and the costs and charges occasioned by such neglect or refusal. (13 *Geo.* 3. c. 78. s. 67.)

All penalties and forfeitures by this Act imposed

how to be
recovered.

for any offence against the same, and all costs and charges to be allowed and ordered by the authority of this Act, shall be levied by distress and sale, by warrant of some justice where the offence, neglect, or default, shall happen, or such order for payment of such costs or charges shall be made, which warrant such justice shall grant, on conviction of the offender by confession, or the oath of one witness, or upon order made as aforesaid. And the penalties and forfeitures, when levied, shall be paid half to the informer, and half to the surveyor, for the repair of the highways, unless otherwise directed by this Act. But if the surveyor shall be the informer, then the whole shall be employed towards the repair of the highway. And if such distress cannot be found, and such penalties and forfeitures, or the said costs and charges, shall not be forthwith paid, the justice shall commit the offender or person liable to pay the same to the common gaol or house of correction, for any time not exceeding three months, unless the penalty, forfeitures, costs, and charges, respectively be sooner paid. (13 Geo. 3. c. 78. s. 72.)

If the de-
faulters live
out of the
district.

And if the offender or person liable or ordered to pay the same live out of the jurisdiction of the said justices, any justice of the limit where such person shall inhabit, on request to him made, and on a true copy of the conviction, and of the order of payment of such costs and charges being produced and proved before him by one witness upon oath, shall by his warrant cause the penalty or forfeiture mentioned in such conviction, and the costs and charges mentioned in such order, or so much thereof as shall not have been paid, to be levied by distress and sale; and if no sufficient distress can be had, shall commit him to the common gaol or house of correction of such limit, for the time and in the manner aforesaid. (*Ibid.*)

Warrant of
distress.

But no warrant of distress, unless otherwise directed by this Act, shall be issued for levying any penalty or forfeiture, costs or charges, until six days after the offender shall have been convicted, and an order made and served upon him for the payment thereof. (*Ibid.* s. 23.)

If any person shall think himself aggrieved by any thing done by any justice or other person in the execution of this Act, and for which no particular method of relief hath been already appointed, he may appear to any general or quarter sessions for the limit where the cause of complaint shall arise, giving notice in writing of his intention to bring such appeal, and of the matter thereof, to the justice, or other person against whom the complaint shall be made, within six days after the cause of such complaint arose; and within four days after such notice entering into recognizance before a justice within such limit, with one sufficient surety, conditioned to try such appeal at, and abide the order of and pay such costs as shall be awarded by the justices at such general or quarter sessions. (13 Geo. 3. c. 78. s. 80.)

No appeal shall be made against any conviction for a penalty or forfeiture, unless the person convicted shall at the time of such conviction, if he be then present, if not, within six days after, give notice of his intention to appeal, and at the same time enter into recognizance with sufficient sureties, to pay such penalty or forfeiture, in case the conviction be affirmed upon the appeal; and on his giving such security, the further proceedings for such penalty or forfeiture shall be suspended until the appeal be heard and determined. (*Ibid.*)

ILLEGITIMATE CHILDREN—See BASTARDS.

INCUMBENT—See PARSON, RECTOR, &c.

Inhabitant.

An inhabitant is a dweller, or householder, in any vill; thus, inhabitants in a vill are the householders in the vill. (2 *Inst.* 702.)

The word "inhabitants" includes tenant in fee simple, tenant for life, years, by *elegit*, &c. tenant at will, and he who has no interest but only his habitation and dwelling. (6 *Rep.* 60.)

So "he who hath a house in his hands in a town

may be said to be an inhabitant." (*Carth.* 119; but see PARISHIONER, in this Dictionary.)

Juries and Jury Lists.

By a recent Act, 6 Geo. 4. c. 50. commonly known as the *New Jury Act*, certain parish officers and others are required to prepare and return the lists from which juries are summoned.

Warrants to be first issued by clerks of the peace.

The several *clerks of the peace* in England and Wales, are required, within the first week in July, annually to issue their warrants to the high constables of hundreds, commanding them to issue precepts to churchwardens and overseers of parishes, requiring them to prepare, before the 1st of September, lists of all men residing within their parishes, &c. liable to be summoned to serve on juries. (6 Geo. 4. c. 50. s. 4.)

High constables to issue precepts.

Within fourteen days after the receipt of such warrant of the clerk of the peace, every *high constable* shall issue his precept, with a sufficient number of printed forms of return, to the churchwardens and overseers, requiring them to prepare such lists as aforesaid. If more than one high constable, each to have a warrant, and each to be liable for the performance of the duty referred to; and if any parish, &c. shall extend into more than one hundred it shall be deemed to be within that in which the principal church is situate. (*Ibid.* s. 6.)

Churchwardens and overseers to make out lists.

On receiving the high constables precept, churchwardens and overseers of parishes, &c. shall proceed forthwith to make out such lists, according to the form sent to them, (*Ibid.* s. 8.) with the exception specially made by section 50, that the lists of men resident in the several wards in the city of London shall be made by the same parties as heretofore; and that the shops, warehouses, counting-houses, chambers, or offices, occupied by such persons shall be deemed their places of abode.

Exception as to wards of London.

Lists to be fixed on

On the "three first" (q. "first three?") Sundays in the month of September the churchwardens and

overseers shall affix a copy of a list upon the principal door of all churches, &c. within their parishes, with a notice stating when and where objections to the lists will be heard by justices of the peace. And such churchwardens, &c. shall keep the original list, or a true copy thereof, *to be inspected by any inhabitant* at any reasonable time during the "*three first*" weeks of September, without fee or reward; and for this purpose they may cause copies of the lists to be printed at the expense of their parishes, &c. (*Ibid.* s. 9.)

church doors with notice, &c.

May be inspected by inhabitants gratis.

Copies may be printed.

The justices of the peace in every division in England and Wales shall hold a special petty sessions within the last seven days of September in every year, of which notice shall be given before the 20th of August preceding to high constables, churchwardens, &c.; and the churchwardens and overseers of the several parishes, &c. shall attend at such sessions, and there produce the lists of men liable to serve on juries, and answer upon oath all questions put to them by the justices. And the said justices may amend such lists by striking out or inserting names, and rectifying errors or omissions. The justices present, or two of them, shall then sign the list as allowed by them, which shall be received by the high constable, and delivered by him to the Court of Quarter Sessions, next holden for the county, &c. on the first day of its sitting, upon oath. (*Ibid.* s. 10.)

A special petty sessions to be holden annually for correcting lists, &c.

At any reasonable time between the first of July and the first of October in every year, the churchwardens and overseers of parishes, &c. on request made by them to any officer having the custody of any duplicate or tax assessment, shall have free liberty to inspect the same and make extracts therefrom; and every court of petty sessions and all justices of the peace of the district, &c. shall, upon the like request, have the same privilege. (*Ibid.* s. 11.)

Churchwardens, &c. may inspect tax assessments.

Any churchwarden, overseer, or constable neglecting or refusing to perform his duty under this Act, may be punished on conviction before a justice, by a fine not exceeding 10*l.* nor less than 40*s.* (*Ibid.* s. 45.)

Fines for neglect of duty.

KING'S TAXES. See ASSESSED TAXES.

Lecturer.

In London, and other great cities, there are lecturers who are assistants to the rectors of churches in preaching, &c. The origin of *such* lectureships may perhaps be ascribed to necessity, or the anxiety of the parishioners at large to relieve the rector of a portion of his labours; while others have originated in the piety of individuals, by endowments or otherwise, and are anomalous offices, not subjected to the controul of the rector or minister, on the one hand, nor yet vested with the full ecclesiastical privileges of the chief minister of a church or chapel.

Lecturers, as assistants to the rector, are usually chosen by the vestry, or chief inhabitants of the parish, and are generally the afternoon preachers. It is a general rule that they cannot act, whether endowed or not, without the rector's consent, unless there be a custom to the contrary; and the law requires that they should have the approbation and admission of the ordinary, subscribe to the Thirty-nine Articles, be licensed as other ministers, declare their assent to the Book of Common Prayer, and in general conform to ecclesiastical regulations.

Lecturers appointed under the directions of some pious founder, by will or otherwise, are frequently permitted to act without the consent of rectors of churches, &c. but it seems exceedingly doubtful whether it is competent to any person to engraft a lectureship, by compulsion, on the church, contrary to Act of Parliament. The licence and approbation of the ordinary is indispensable in all cases.

Immemorial custom to elect a lecturer will supersede the rector's consent. (4 *Term Rep.* 125.) But the custom must be shown.

Lighting and Watching.

In the year 1830, an Act was passed for the purpose of enabling parishes to adopt a prescribed system of watching and lighting, without the necessity of private bills. That act, however, (the 11 Geo. 4. c. 27.) having been deemed in some respects of doubtful construction, it has been *wholly repealed* by the 3 & 4 Will. 4. c. 90, passed on the 28th of August, 1833. The provisions of the new Act follow in full, repetitions and redundancies only omitted.

Sect. 1 repeals the 11 Geo. 4. c. 27.

2. That nothing herein contained shall extend or be construed to interfere with any rates made, acts done, or contracts or agreements heretofore made under the authority of the said recited Act previous to its repeal, or to prevent or defeat any prosecution commenced or to be brought for any offence against the said Act, &c.

Such repeal not to affect the proceedings under that Act previous to the passing of this Act.

3. That the inspectors appointed under the authority of the said recited Act shall continue to act, and shall have the same powers, authorities, and be subject to the discharge of the same duties, as the inspectors to be appointed under this Act.

Inspectors under former Act to continue to act until others appointed.

4. That this Act, and the several provisions thereof, shall apply to and may be adopted, under and subject to the regulations herein contained, by all or any or either of the parishes in *England and Wales*.

Act applicable to all parishes.

5. That from and after the passing of this Act, upon the application in writing of three or more of the rate-payers of any parish, it shall be lawful for the churchwardens thereof, and they are hereby required, within ten days after the receipt of such application, to appoint and notify a time and place for a public meeting of the rate-payers of the said parish, for the purpose of determining whether the provisions in this Act contained shall be adopted and carried into execution in the said parish: provided that the time appointed for holding the said meeting shall not be less than ten days and not more than twenty-one days from the time of the said application so being

On application of three rated inhabitants, churchwardens to convene a meeting in vestry to determine whether the provisions of this Act shall be adopted.

delivered to them as aforesaid, and that notification of the time and place of meeting shall be made by forthwith affixing a notice on the principal outer door of every parish church or chapel situate within such parish, or on the usual place of affixing notices relating to the parochial affairs of any such parish, and also by publication of the same in the parish church or chapel on the *Sunday* previous to the day appointed for holding such meeting, during or immediately after divine service.

Chairman to be elected, who shall determine any controversies.

6. That such person as may be elected by the rate-payers present shall preside as chairman at such meetings; and that if any controversy shall arise at any such meeting as to the qualification or right of voting or eligibility of any person claiming to vote, or as to the qualification or eligibility of any candidate, such controversy shall be determined by the chairman.

Chairman to read requisition, and require persons to determine whether Act shall be adopted.

7. That the chairman who shall preside at any meeting assembled as herein directed, shall read or cause to be read the requisition whereupon the meeting shall have been summoned, and shall require the persons assembled thereat to determine by majority of votes, as herein mentioned, whether the provisions of this Act, as herein set forth, shall or shall not be adopted and acted upon within such parish: provided, nevertheless, that it shall be lawful for the majority of the rate-payers present to adjourn such meeting from time to time.

If meeting determine to proceed, the provisions of this Act shall thenceforth take effect.

8. That if at any such meeting it shall be determined by a majority consisting of two-thirds of the votes of the rate-payers present at such meeting, that the provisions of this Act shall be adopted, in such case such provisions shall from thenceforth take effect and come into operation in such parish; and it shall forthwith be determined that a certain number not being more than twelve nor less than three inspectors shall be elected to carry such purposes into effect; and the number of inspectors so determined upon shall be elected in manner herein mentioned.

Inhabitants to fix amount of money to be raised.

9. That the rate-payers of such parish shall at their first meeting, or at some adjournment thereof, and so on from time to time in every succeeding year, at a meeting to be called for that purpose in

manner herein directed, fix and determine the total amount of money which the inspectors shall have power to call in any one year, in order to carry into effect the provisions of this Act, such sum to be raised in the manner herein directed, upon the full and fair annual value of all property rateable for the relief of the poor within such parish, such full and fair annual value to be computed according to the last valuation for the time being acted upon in assessing the poor's rate for the said parish: provided nevertheless, that any five rated inhabitants, qualified to vote as herein mentioned, may, at such meeting or adjournment thereof, in writing given to the chairman of the said meeting, demand a poll to be taken of the rate-payers qualified to vote upon the question as to whether this Act and the provisions thereof, or any part thereof, shall be adopted in such parish, and also as to the amount of money to be raised in the succeeding year for the purposes thereof, and the number of inspectors to be elected as determined at such meeting, and which said demand of a poll the said chairman is required forthwith to deliver to the churchwardens of the said parish.

Poll may be demanded as to adoption of Act.

10. That the said churchwardens shall, on the first Sunday next after the receipt of such demand of a poll, affix or cause to be affixed a notice on the principal outer door of every parish church or chapel situate within such parish, or on the usual place of affixing notices relating to parochial affairs of any such parish, specifying some day, not earlier than ten days and not later than twenty-one days after such Sunday, and at what place or places within the said parish, the rate-payers are required to signify their votes for or against the adoption of this Act, or such part thereof as may have been agreed upon at the said meeting, as well as with respect to the annual amount of money to be raised in the succeeding year for the purposes thereof, and the number of inspectors to be elected as determined at such meeting; which votes shall be received on two successive days, commencing at eight of the clock in the forenoon and ending at four of the clock in the afternoon

Notice of poll to be given by churchwardens.

of each day ; and the said notice shall be to the following effect :

Form of
notice.

“ The churchwardens of this parish [*insert the name of the parish*] having received a demand for a poll, duly signed according to the provisions of an Act of the fourth year of the reign of King William the Fourth, intituled *An Act, &c.* [*setting out the title of the Act*], the rate-payers of this parish of [*insert the name of the parish*] are hereby required, all and each of them, on the day of next, and the following day, to signify to the said churchwardens, by a declaration, either printed or written, or partly printed, or partly written, addressed and delivered to one of the churchwardens at [*insert here the place*], their votes for or against the adoption of the aforesaid Act, or so much thereof as relates to watching or lighting [*as the case may be*], the amount of the money to be raised in the succeeding year for the purposes thereof, being [*here insert the sum agreed on at the meeting*], and the number of inspectors to be elected [*insert the number also agreed on*], such sum and such number of inspectors being fixed and determined upon at a meeting of the rate-payers called pursuant to the said Act.
(Signed)

Churchwardens.”

Form of
declaration.

11. That the said declaration shall be to the following effect :

“ I, *A. B.* of street [*or* place or house] in this parish of vote [*for or against, as the case may be*], the adoption of the Act of the fourth year of the reign of his Majesty King William the Fourth, intituled *An Act, &c.* [*set out title of the Act*], or so much thereof as relates to watching or lighting [*as in the notice*], the amount of the money to be raised in the succeeding year for the purposes thereof, being [*as in notice*], and the number of inspectors to be elected [*as in notice*].”

Churchwardens to examine the votes, and declare whether two-thirds of

12. That the said churchwardens shall carefully examine the votes to them delivered, and shall compare them with the last rate made for the relief of the poor of the said parish, and shall be empowered

to call before them and examine any parish officer touching the said votes, or any rate-payer so giving his vote, and after a full and fair summing-up of the said votes shall, by public notice according to the form and manner hereafter prescribed, declare whether or not two-thirds of the votes given have been given in favour of the adoption of the said Act (or so much thereof as relates to watching or lighting, as in the notice), and also as to the sum of money to be raised in the succeeding year, and the number of inspectors to be elected to be (as in the notice): provided always, that the whole number of persons voting shall be a clear majority of the rate-payers of the parish: provided also, that in case of a poll being demanded as aforesaid, the adoption or non-adoption of this Act, with the sum to be raised, and the number of inspectors to be elected as aforesaid, shall be decided by such number of votes as aforesaid: provided also, that the expenses incurred by the churchwardens in calling such meeting, giving the notices, and in taking such poll, shall be paid out of the rate collected for the relief of the poor in the said parish.

13. That any of the rate-payers of the parish, not exceeding five together, may inspect, at or in the vestry-room or in some convenient place within the same parish, and they are hereby empowered to inspect, the votes so given for and against the adoption of this Act, with the sum to be raised, and number of inspectors to be elected as aforesaid, at all seasonable times within one month after such notice shall have been given; and the churchwardens of the said parish are hereby required carefully to preserve the said votes, and freely to permit and allow the examination thereof by the aforesaid rate-payers of the said parish at all seasonable times within the period aforesaid.

14. That no person shall be deemed a rate-payer, or be entitled to vote, or do any other act, matter, or thing as such, under the provisions of this Act, unless he or she shall have been rated to the relief of the poor for the whole year immediately preceded-

they are in
favour of
adopting this
Act.

Rate-payers
may inspect
votes.

No person to
vote unless
he has been
rated one
year.

ing his so voting or otherwise acting as such rate-payers, and shall have paid all the parochial rates, taxes, and assessments, due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such voting.

Notice of
adoption of
this Act.

Act may be
abandoned.

15. That notice of the adoption of this Act (or any part thereof, specifying it), with the amount of the sum to be raised in the succeeding year, and the number of inspectors to be elected by any parish, shall be forthwith given by the churchwardens for the time being of the said parish by affixing a notice of the same to the principal door of every church and chapel within the said parish, or on the usual place of affixing notices relating to the parochial affairs of such parish; and in such case the provisions of this Act shall from thenceforth take effect and come into operation in such parish: provided always, that it shall be lawful for the inhabitants present at any meeting called in manner herein directed, at any time after the expiration of three years from the time when the provisions of this Act shall have been adopted, to determine that the provisions of this Act shall, from and after a day to be fixed upon at such meeting, cease to be acted upon; in which case, from and after such last-mentioned day, the provisions of this Act shall no longer be in force in such parish: provided nevertheless, that the provisions in this Act contained shall remain and continue in force for the purpose of collecting and recovering any rate which may have been previously made; and if, on the abandonment and ceasing to act upon the provisions of this Act there shall be any balance in the hands of the said inspectors, after defraying the expenses incurred in carrying into effect the provisions of this Act, the said balance shall be paid over to the overseers of the poor of the said parish, to be applied in aid of the poor-rates of the said parish.

If meeting
determine
against
adopting
this Act.

16. That in case any such meeting, or, in case of a poll having been demanded, a majority of two-thirds of the votes as aforesaid, shall not have determined to adopt the provisions of this Act, it shall not

be lawful for the inhabitants to meet again in less than one year from the period at which such meeting shall have been so convened.

17. That the inspectors herein mentioned shall be elected in manner following; the churchwardens of any parish adopting the provisions of this Act shall, in the manner herein first directed, forthwith call a meeting of the rate-payers of such parish, and each candidate, being a person who shall reside within such parish, and who shall have been assessed or charged by the last rate made for the relief of the poor, in respect of a dwelling-house, or other tenement or premises of the annual value, according to the said rate, of 15*l.* or more, shall be eligible to be an inspector, and shall be proposed at the said meeting by some person duly qualified to vote thereat, and shall be seconded by some other person in like manner qualified; and if more candidates than the number of inspectors authorized to be elected shall be proposed, and a poll shall be demanded by any ten persons qualified to vote on behalf of any such candidates, then the chairman shall open and proceed with such poll, and in a book or books prepared for that purpose, which book or books the churchwardens are hereby required to cause to be prepared, shall enter or cause to be entered the name of all such candidates, and the name of every person duly qualified to be present and vote who shall desire to vote, together with his description and abode, and shall register the vote of every such person for every or any such candidate as every such person may respectively require; and if the votes of all the persons duly qualified and desirous to vote cannot be conveniently collected and registered by four of the clock of the same day upon which the poll shall have been commenced, then the chairman shall at that hour adjourn such poll to the day next succeeding, unless such day shall be a Sunday, Christmas-day, or Good Friday, and in that case to the day following, and then proceed to collect and register the votes of all persons duly qualified and applying to vote; pro-

Mode of
electing
inspectors.

vided nevertheless, that the poll shall finally close at four of the clock on the day to which it shall have been adjourned, or sooner, provided all persons duly qualified and desirous to vote shall have voted, and after the lapse of one hour without any person offering to vote; and as soon after the close of the poll as may be possible the result thereof shall be declared at the place where the election may have been holden, and certified by the chairman to the overseers of the poor; and the said churchwardens shall be reimbursed all such reasonable charges and expenses as may be incurred in providing clerks and books, and otherwise in the performance of the duties hereby required of them by the candidates at the said election for the said office: provided nevertheless, that if the provisions of this Act are adopted at the meeting first called for that purpose, the said inspectors may be appointed at the same time by the rate-payers of such parish then present, unless a poll should be demanded, and if such poll should be demanded, it shall be proceeded with as herein directed.

At the end of twelve months the inspectors to give notice to churchwardens that they are ready to produce their accounts, and churchwardens to call a meeting for that purpose.

Meetings in future years.

18. That in every parish adopting the provisions of this Act the inspectors shall, within one month next after the expiration of twelve calendar months from the day of such adoption, give notice to the churchwardens of the said parish that they are ready to produce their accounts and vouchers for the previous year, and thereupon the said churchwardens shall give due notice, in the manner required with respect to the first meeting to be held under this Act, that a meeting of the rate-payers of the said parish will be held at an hour and place in the said notice to be mentioned, on some day, not being a Sunday, within ten days from the receipt of such notice, for the purpose of the said inspectors producing such accounts and vouchers, and for the election of inspectors for the execution of this Act, and for determining the amount of the money to be raised for the purposes of this Act, for the current year; and in every future year such meeting shall, for the

purposes aforesaid, be held on the same day in the corresponding month, except such day should fall on a Sunday, and then on the day following.

19. That at such annual meeting the said inspectors shall produce their accounts and vouchers of all monies received and paid by virtue of this Act for the previous year; and a duplicate or copy of such accounts, verified on oath before any two justices by the said inspectors or any two of them, shall be deposited with the said inspectors, and shall be open at all reasonable times to the inspection of all parties interested; and at such annual meeting one-third of the inspectors, or as near thereto as the number appointed will admit of, shall go out of office in rotation; and in place of such inspectors so going out of office a like number of other inspectors shall be elected: provided always, that any of such outgoing inspectors shall be re-eligible, and may be re-elected, and shall in such case continue to act and remain in office.

Inspectors at such meeting to produce accounts; one third of them to go out of office and others elected.

20. That the chairman appointed to preside at such annual meeting shall proceed in such manner as the chairman at the first meeting to be held under this Act is hereinbefore directed to proceed at the election of the inspectors to be first appointed, and shall decide on questions which may arise as to the eligibility or qualification of any person whatsoever, and as to all matters connected with the election, and shall declare the result of the same.

Chairman to decide questions as to eligibility, &c.

21. That in case any inspector shall die, or become disqualified by change of residence or otherwise, or shall neglect to act, and in case of any casual vacancy happening, so that the number of inspectors shall be reduced to less than three, notice shall be immediately given by the acting inspectors to the churchwardens, who shall forthwith call a meeting of the rated inhabitants for the purpose of filling up such vacancies.

How vacancies in the number of inspectors shall be filled up.

22. That the inspectors shall meet on the first *Monday* in every month, at noon, at some convenient place or office previously publicly notified; and at such monthly meeting it shall be lawful for

Inspectors to meet monthly.

any inhabitant rated to the relief of the poor to appear and prefer any matter of complaint concerning any matter or thing done by force or in pursuance of or under pretence of this Act.

Special
meetings of
inspectors.

23. That such inspectors shall meet at all other times and so often as at any previous meeting shall be determined upon; and it shall be at all times competent for any one inspector, when three inspectors only shall have been appointed, and in all other cases for any two inspectors, by writing under his or their hands, to summon upon at least forty-eight hours' notice, the inspectors for any special purpose therein named, and for such time as shall be therein named; and that at all meetings of such inspectors any number not less than one-third of the whole number when more than three inspectors shall have been appointed, and when only three inspectors shall have been appointed then not less than two inspectors, shall constitute a quorum for transacting business.

Quorum.

Inspectors to
appoint of-
ficers during
pleasure, and
rent an office
for the trans-
action of their
business.

24. That it shall be lawful for the said inspectors for the time being, to appoint, during pleasure, such treasurer and other officers as they shall think necessary for the purposes of this Act, and to remove and displace the same, and to hire and rent a sufficient office or house or room for holding their meetings and transacting their business, and also to appoint suitable salaries, wages, and allowances to and for such treasurer and other officers, and agree for a reasonable rent for such office or house or room, and to pay such salaries, wages, and allowances, and such rent, out of the monies received by the inspectors under the authority of this Act: provided, that no person shall at the same time hold *two* offices or situations under the said inspectors.

Security to be
taken from
treasurer.

25. That it shall be lawful for the said inspectors, or any two or more of them, and they are hereby required, to take security from the treasurer to be appointed by virtue of this Act for the due execution of his office, which security shall be to the full amount of the sum likely to be in the hands of the said treasurer at any one time; and in case any

such treasurer shall neglect or refuse for the space of three weeks next after his appointment to give or offer such security to the satisfaction of the said inspectors, then the appointment of every such person shall be null and void, and the said inspectors shall within three weeks appoint some other fit and proper person to the office.

26. That every such treasurer and other officer appointed by virtue of this Act shall under his respective hand, and at such time or times, and in such manner as the said inspectors shall direct, deliver to the said inspectors, or such person as they shall appoint, true and perfect accounts in writing of all matters and things committed to his charge, and also of all monies received for the purposes of this Act, and of how much thereof shall have been expended and disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such monies as shall remain due from him to the treasurer for the time being, or to such person or persons as the said inspectors shall appoint to receive the same; and if any such treasurer, officer, or other person, shall refuse or neglect to render such account, or to produce and deliver up the vouchers relating to the same, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said inspectors, or to such person or persons as they shall appoint to receive the same, within three days after being thereunto required by the said inspectors by notice in writing under the hands and seals of any two or more of the said inspectors given to or left at the last or usual place of abode of such officer, all books, papers, and writings, in his custody or power, relating to the execution of this Act, or to give satisfaction to the said inspectors, or such other person or persons as aforesaid, respecting the same, in every such case, upon complaint made by the said inspectors, or by such person or persons as they shall appoint for that purpose, of any such refusal or wilful neglect as aforesaid, to any justice of the peace, such justice may, and he is hereby

Treasurer
and officers
to account.

Proceedings
against of-
ficers neglect-
ing to
account.

required to issue a summons under his hand and seal for the officer so refusing or neglecting to appear before two justices of the peace; and upon the said officer appearing, or having been so summoned and not appearing without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said justices to hear and determine the matter in a summary way; and if, upon confession of the party, or by the testimony of any credible witness or witnesses upon oath (which oath such justices are empowered to administer), it shall appear that any monies remain due from such officer, such justices may and are required, upon non-payment thereof, by warrant under their hands and seals, to cause such money to be levied by distress and sale of the goods and chattels of such officer: and if no goods and chattels of such officer shall be found sufficient to satisfy the said money and charges, or if it shall appear that such officer had refused or wilfully neglected to render such account, or to produce the vouchers relating thereto, or that any books, papers, or writings, relating to the execution of this Act, remained in the hands, or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same, in every such case such justices are required to commit such offender to the common gaol or house of correction for the county, city, or place, where such offender shall be or reside, there to remain, without bail or mainprize, until he shall have given a true and perfect account as aforesaid, or until he shall have paid such monies as aforesaid, or compounded with the said inspectors for such money, and shall have paid such composition in such manner as they shall appoint, (which composition the said inspectors are hereby empowered to make and receive,) and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof, to the said inspectors, or to such other person or persons as aforesaid; but no such offender shall be kept or detained in such common gaol or house of

correction for want of sufficient distress, by virtue of this Act, for any longer space or time than three calendar months.

27. That no prosecution or commitment of any treasurer or other officer or person appointed under the powers of this Act, shall acquit or discharge any surety or security that may have been taken by the said inspectors for the due and faithful execution of his or their office, or the payment of monies received by him or them respectively.

Commitment of offender not to discharge his sureties.

28. That if any person who shall be employed as treasurer, or any other officer or servant who shall be in any wise employed by the said inspectors for putting this Act into execution, shall exact, take, or accept, any fee or reward other than such salaries, allowances, and rewards, as are appointed by this Act, or shall be appointed by the said inspectors, or shall be concerned or interested in any bargain or contract made by the said inspectors; (and no person, during the time he holds the office of inspector, shall hold any office or place of trust created by this Act within the parish, or be concerned directly or indirectly in any contract with the parish;) every person so offending shall be incapable of ever serving or being employed under this Act, and shall forfeit the sum of fifty pounds to any person who shall sue for the same.

Officers taking any fee or reward besides the salary or fees appointed, to forfeit 50*l*.

29. That the said inspectors may sue and be sued in the name of any one of them; and all actions or suits that may be necessary for the recovery of any penalty or sum of money due or payable by virtue of this Act, or for or in respect of any other matter or thing relating to this Act, may be brought in the name of any one of the said inspectors; and that no action or suit which may be brought, commenced, or prosecuted by or against the said inspectors, or any of them, by virtue or on account of this Act, shall abate or be discontinued by the death, resignation, or removal, of such inspector, but such inspector shall be deemed plaintiff or defendant in any such action or suit (as the case may be): provided also, that in all cases in which such inspector shall be the

Inspectors may sue and be sued in the name of any one of them.

plaintiff or defendant on the record in any action or actions, suit or suits, in which in effect the said inspectors shall be suing or sued in the name of such one inspector, he (although appearing as the plaintiff or defendant on the record) shall nevertheless (if not otherwise interested or objectionable) be a good and competent witness either for or against the said inspectors; and all the affidavits of debt or service which may be necessary, preparatory to or in the prosecution or defence of any such action, &c. may be lawfully made by such one inspector: provided also, that every such inspector in whose name any action or suit shall be so commenced, prosecuted, or defended, shall always be reimbursed and paid, out of the monies to arise by virtue of this Act, all such costs, charges, and expenses, as he shall be put to or become chargeable with, as plaintiff or defendant therein; and in case of his removal or ceasing to act, all such costs, &c. shall be paid by the inspector for the time being; and no inspector shall be personally answerable or liable for the payment of the same or any part of them, unless such action or suit shall arise in consequence of his own wilful neglect or default, or have been brought or commenced or be defended without the order or direction of the said inspectors.

Proceedings at meetings of inspectors to be entered in books, which shall be good evidence.

30. That all acts, orders, and proceedings, of the said inspectors at any of their meetings shall be entered in a book, and shall be signed by two of the inspectors who were then present; and all such acts, orders, and proceedings, shall then be deemed original acts, orders, and proceedings; and such books may be produced as evidence of all such acts, orders, and proceedings, upon any appeal, trial, information, &c.

Accounts to be kept.

31. That the said inspectors shall from time to time direct books to be provided and kept, in which books shall be entered true and regular accounts of all sums of money received and expended for the purposes of this Act; and such books shall at all reasonable times be open to the inspection of the said inspectors and of every inhabitant rated to the

relief of the poor, without fee or reward; and the said inspectors and other persons aforesaid, or any of them, may take copies of or extracts from the said books, or any part thereof, without paying for the same; and in case the said inspectors shall refuse to permit the said persons to inspect the same, or take copies or extracts, such inspector shall forfeit and pay any sum of money not exceeding 5*l.* for each default.

32. That as soon as the inspectors have been elected, it shall be lawful for them, or any two or more of them, from time to time to issue an order under their hands to the overseers of the poor of any parish to which the provisions of this Act shall be extended, by which they shall require the said overseers to levy the amount therein mentioned.

Inspectors to issue an order to overseers for payment of money.

33. That the overseers shall, for the purpose of collecting, raising, and levying, the rate necessary for the purposes of this Act, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor in the said parish: provided always, that owners and occupiers of houses, buildings, and property (other than land), rateable to the relief of the poor in any such parish, shall be rated at and pay a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated at and pay for the purposes of this Act: provided also, that the total amount of the sum to be collected, raised, and levied, for the purposes of this Act, within any one year, shall not exceed such sum as shall have been agreed on by the inhabitants of the said parish as aforesaid, and that the said sum shall be assessed upon the full and fair annual value to which lands, houses, buildings, and other property, within the said parish, shall be rated, or shall be rateable according to the last valuation made and acted upon for the rate for the relief of the poor within the said parish.

Power to collect rates.

34. That it shall be lawful for the overseers of the poor of any such parish, and they are hereby required, whenever, according to the rate made for the

Land and houses to be rated separately.

relief of the poor, one and the same person shall be rated in one sum in respect of land, and also of houses, buildings, and other property, to cause such land, and also such houses, buildings, and other property, to be separately assessed, and the sum hereby authorized to be levied shall be assessed accordingly: provided always, that every court-yard, yard, or garden (such garden not being a market garden or nursery ground) shall be included in and make part of the assessment to be made on the house, buildings, or other property to which they may be respectively attached: provided also, that such land, houses, buildings, and other property shall not in the whole be assessed at a higher amount than they were in the last rate made for the relief of the poor within the said parish.

Power of succeeding overseers to collect rate.

35. That if the overseers of the poor of any parish adopting this Act shall go out of office before they shall have collected the amount mentioned in the order aforesaid, they shall deliver to the succeeding overseers, within seven days, a full and particular account in writing of the names of the parties from whom any money may be due on account of the rate made in pursuance of this Act, as well as the last order issued to them by the said inspectors; and in such case the succeeding overseers shall have the like powers and remedies, &c. as their predecessors.

Overseers to pay amount to treasurer.

36. That the overseers of the poor of every parish adopting this Act, to whom any such order shall be issued, shall pay over the amount to the treasurer to be appointed in the said parish under this Act within three calendar months from the delivery of such order to one of the overseers, and shall keep the accounts of the said rate separate and distinct from the accounts of the rates levied for the relief of the poor; and at the time of making any payment to the said treasurer the said overseers shall deliver to him a note in writing signed by them, specifying the amount so paid, which note shall be kept by the treasurer as a voucher for his receipt of that particular amount; and the receipt of the said treasurer, specifying the amount paid to him by the overseers,

shall be a sufficient discharge to the overseers for such amount, and shall be allowed as such in passing their accounts with their respective parishes.

Receipt of treasurer to be a discharge to overseers.

37. That where any persons other than the overseers of the poor shall by virtue of any office or appointment be authorized and required to make and collect the rate for the relief of the poor in any parish to which the provisions of this Act shall be extended, such persons, by whatsoever title they may be called, shall be deemed to be overseers of the poor within the meaning of this Act, and to be included under the words "Overseers of the Poor."

Where other persons are authorized to collect poor's rates, such persons to be deemed overseers.

38. That in case the amount directed by such order to be paid by the overseers in any parish to which all or any of the provisions of this Act shall be extended shall not be paid to the said treasurer within the time specified in the said order, any justice of the peace, upon complaint thereof by the said treasurer or by any one of the inspectors, may and he is hereby required to issue a summons under his hand and seal for the said overseers so refusing or neglecting to pay such money to appear before two justices of the peace; and upon the said overseers appearing, or having been so summoned and not appearing, without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said justices and they are hereby required, in case the said money is not paid, to issue their warrant for levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said overseers; and in case the goods of all the overseers shall not be sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such parish for the purposes of this Act.

Overseers may be distrained upon for non-payment.

39. That the said inspectors shall from time to time appoint and employ such number of able-bodied watch-house keepers, serjeants of the watch, watchmen, patrols, street-keepers, and other persons as they shall think sufficient for the proper protection of the inhabitants, houses, and property, streets and other places within the limits of this Act, by day or

Watchmen, &c. to be appointed, and provided with arms, clothing, &c.

by night, or by day and by night, and provide for the use of all such watchmen, watch-house keepers, serjeants of the watch, patrol, and persons as aforesaid, such clothing, arms, ammunition, and weapons, and shall assign to them such beats and rounds and duties, and appoint such hours for them to be on duty, and also such wages, rewards, and gratuities, or remunerations for their services, and also make such rules, orders, and regulations relative to such watch-house keepers, serjeants of the watch, watchmen, patrol, street-keepers, and other persons, and their duties, as to the said inspectors shall seem meet, and also shall and may offer and give, as well to the said persons as to any other not specially employed by them, such gratuities and rewards for apprehending felons and others, offenders within the limits of this Act, as to them shall seem proper; and shall and may defray the expences of prosecuting any such felons and offenders, for the protection of the inhabitants of any parish adopting the provisions of this Act, or in defending any of the said persons or other officers of the said inspectors in the execution of their duty, as they shall think proper; and the said wages, rewards, gratuities, and the costs of such prosecutions or defences, and all other expences that may be incurred by the said inspectors for the protection and guard of the inhabitants, shall and may be paid by the said inspectors out of the monies received in pursuance of this Act.

Watchmen,
&c. to deliver
up clothing
on removal,
&c.

Penalty.

40. That all such clothing, arms, ammunition, and weapons, so provided for the use of such watchmen, watch-house keepers, serjeants of the watch, patrol, and persons as aforesaid, shall remain and continue the property of the inspectors for the time being, and in case of the resignation, removal, or death of any such watchmen, watch-house keeper, serjeant of the watch, patrol, or person as aforesaid, shall be returned to the said inspectors; and in case of neglect or refusal so to do, the said watchmen, watch-house keeper, serjeant of the watch, patrol, or person as aforesaid, or in case of his death the party in possession thereof, shall be subject and liable to a

penalty not exceeding the sum of twenty pounds, to be recovered for the use of the said inspectors.

41. That the watchmen, serjeants of the watch, patrols, and other persons to be appointed by virtue of this Act shall, during the time they shall be on duty, use their utmost endeavours to prevent any mischief by fire, and also to prevent all robberies, burglaries, and other felonies and misdemeanors, and other outrages, disorders, and breaches of the peace within the limits of the parish adopting the provisions of this Act; and to apprehend and secure all felons, rogues, vagabonds, and disorderly persons who shall disturb the public peace, or any person or persons wandering, secreting, or misbehaving himself, herself, or themselves, or whom they shall have reasonable cause to suspect of any evil designs, and to secure and keep in safe custody every such person, in order that he or she may be conveyed as soon as conveniently may be before one of his Majesty's justices of the peace, to be examined and dealt with according to law; and it shall and may be lawful to and for the said watchmen, serjeants of the watch, patrols, and other person or persons so appointed as aforesaid, to call and require any person or persons to aid and assist them in taking such felons, rogues, vagabonds, and all disorderly or suspected persons as aforesaid; and in case any person or persons shall assault or resist or shall promote or encourage the assaulting or resisting any of the watchmen, serjeants of the watch, patrols, or other person or persons so appointed as aforesaid, in the execution of their duty, every such person shall for every such offence forfeit and pay any sum not exceeding forty shillings; and in case any such offender shall not, on conviction, pay the said forfeiture, such justice is hereby required to commit him, her, or them to the house of correction, there to be kept to hard labour, if the said justice shall so order, for any time not exceeding three calendar months, unless such forfeiture shall be sooner paid; or instead of committing the said offender as aforesaid, the said justice may, by warrant under his hand and seal, cause the said for-

Duty of
watchmen,
&c.

feiture, as well as the costs (if any) to be levied by distress and sale of the goods and chattels of the offender, returning the overplus (if any) of the money raised or recovered, after discharging the said forfeiture and the costs and expences of recovering and levying the same, to the owner of the goods and chattels so seized and distrained.

Watchmen,
&c. to be
sworn in, and
to have the
power of
constables.

42. That all watchmen, serjeants of the watch, and patrols shall be sworn in as constables before any justice of the peace, and act as such while in execution of the powers and authorities of this Act, with the like powers and authorities, privileges and immunities, and subject to the like penalties and forfeitures: provided that no person by being sworn in and acting as or executing the office of a constable shall thereby *gain a settlement* in such parish.

Certain fees
to be paid
over to in-
spectors.

43. That in all cases in which any of the duties usually performed by constables shall be executed by any of the officers appointed by the inspectors, all fees and allowances for such duties shall be paid over to the said inspectors, to be by them applied in aid of the rate levied under this Act.

Fire engines
to be pro-
vided.

44. That it shall be lawful for the said inspectors from time to time to provide and keep up fire engines, with pipes and other utensils proper for the same, for the use of the parish adopting the provisions of this Act, and to provide proper places for keeping the same, and to place such engines under the care of some proper person or persons, and to make such allowance for trouble as may be thought reasonable; and the expences attending the providing and keeping of such engines shall be paid out of the money received by the inspectors under this Act.

Lamp irons
to be put up.

45. That it shall be lawful for the said inspectors, from time to time to cause such lamp irons or lamp posts or other posts to be put or fixed upon or against the walls or palisadoes of any houses, tenements, buildings, or inclosures, (doing as little damage as practicable), or to be put up and erected in such other manner, within all or any of the said roads, streets, and places within the limits of this Act, as they shall think proper; and also to cause such number of

lamps, of such sizes and sorts, to be provided and affixed and put upon such lamp-irons and lamp-posts, as they shall think necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with gas, oil, or otherwise, for such number of hours in every twenty-four hours as they shall think necessary; and also to cause such a number of watch-houses or watch-boxes to be provided, erected, or affixed as they shall think necessary for watching all or any of the streets, roads, and places within the limits of this Act.

46. That nothing herein contained shall extend to authorize the said inspectors, or any body or bodies politic or corporate, or person or persons contracting with the said inspectors for lighting with gas such roads, streets, and public places, to carry or lay any pipe or pipes, cocks or branches from any mains or pipes, against, into, or through any dwelling-house dwelling-houses, manufactories, public or private buildings, or to continue the same, without the consent in writing of the owner or owners, occupier or occupiers for the time being of such dwelling-house or dwelling-houses, manufactories, public or private buildings respectively, nor to enable any body or bodies politic or corporate, or person or persons contracting with the said inspectors for lighting such streets and public places, to enter into or upon any private lands or grounds, without the consent in writing of the owner or owners, occupier or occupiers of such lands or grounds for that purpose first had and obtained.

Gas pipes not to be laid on private premises without consent.

47. That in case the soil, pitching, or pavement of any road or way, for the purpose of laying any gas main or gas pipe along, under, or across the same, be broken up with the consent of the owner or owners of the soil for the time being, and after the same shall have been so laid and placed such owner or owners shall be desirous of having the same removed, it shall be lawful for such owner or owners at any time or times thereafter, if he, she, or they shall deem it necessary or expedient, at his, her, or their own costs

Owners of private grounds may alter position of pipes.

and charges, to alter and vary the position of such pipe or pipes, main or mains, and to relay the same, so that no damage be done thereby to the said body or bodies politic or corporate, or person or persons contracting with the said inspectors, and so that such body or bodies politic or corporate, or person or persons contracting with the said inspectors as aforesaid, be not thereby prevented from or obstructed in lighting any public or private lamp, unless such damage or obstruction be unavoidable.

For stopping
the escape of
gas.

48. That whenever any gas shall be found to escape from any of the pipes which shall be laid down or set up by order of the said inspectors, the body or bodies politic or corporate, or person or persons whosoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any houses, manufactory, building, or other premises within the limits of any parish adopting this Act, shall at their own expence, immediately after receiving notice by parol or in writing from any person or persons whatsoever, to be given or left at their office or usual place of transacting their business, of any such escape of gas, cause the most speedy and effectual measures to be taken to stop or prevent such gas from escaping; and in case the said body or bodies politic or corporate, or person or persons, shall not, within twenty-four hours next after such notice being given of any such escape of gas, effectually stop and prevent the gas from escaping, and wholly remove the cause of complaint, in every such case the said body or bodies politic or corporate, or person or persons as aforesaid, shall for every such offence forfeit and pay any sum not exceeding five pounds for each and every day, after the expiration of twenty-four hours from the time of giving any such notice, during which the gas shall be suffered to escape; which penalty shall be recoverable in a summary way, on the oath or affirmation of one or more credible witness or witnesses, before any two justices of the peace, and shall be recovered, with all reasonable charges, by distress and sale of the goods and

Penalty for
neglect.

chattels of any such body or bodies politic or corporate, or person or persons as aforesaid, by the warrant of any two justices of the peace.

49. That it shall be lawful for the body or bodies politic or corporate, or other person or persons who-soever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish adopting the provisions of this Act, to lay iron pipes, of such breadth, depth, and dimensions, and in such manner as they shall think expedient, under the roads, streets, and other public places within the limits of this Act, for the purpose of carrying off the washings or other waste liquids which may arise in the prosecution of the works aforesaid, the said body or bodies politic or corporate, or other person or persons as aforesaid, doing as little damage as may be in laying the said pipes, and immediately repairing, at their own expence, all such damage; provided that no such washings or other waste liquids, or any other matter or thing made or arising in the manufacture of such gas, shall be conducted or conveyed into any river, brook, canal, or running stream; and that no such pipe shall be laid in any situation where the same can, shall, or may in any manner interfere with, prejudice, or affect any of the present or future public or private wells, sewers, or drains within the limits of the parish or without the consent of the said inspectors.

Power to convey away washings of gas works.

50. That if any body or bodies politic or corporate, company or companies of proprietors, or any other person or persons whatsoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish adopting this Act, shall at any time empty, drain, or convey, or cause or suffer to be emptied, drained, or conveyed, or to run or flow, any washings or other waste liquids, substances, or things whatsoever which shall arise or be made in the prosecution of the said gas works, or in the manufacture

Penalty for conveying washings into any river, &c.

or process of making or procuring such gas, into any river, brook, or running stream, reservoir, canal, aqueduct, waterway, feeder, pond or springhead, or well, or into any drain, sewer, or ditch, communicating with any of them, or do or cause to be done any annoyance, act, or thing to the water contained in any of them, whereby the water contained therein, or any part thereof, shall be spoiled, fouled, or corrupted, in every such case any such body or bodies politic or corporate, &c. so offending, shall forfeit for every such offence the sum of two hundred pounds ; and such penalty or forfeiture may be sued for and recovered, with full costs of suit, in any of his Majesty's courts of law, by regular or summary action of debt or on the case, or by bill, plaint, or information, wherein no essoign, protection, privilege, wager of law, nor more than one imparlance shall be allowed ; and the whole of such penalty shall be paid to the person or persons who shall inform or sue for the same : provided always that no such penalty or forfeiture shall be recoverable unless the same be sued for within six calendar months after the time when such annoyance, nuisance, injury, damage, act, or thing shall have ceased and determined : provided also, that over and above and in addition to the said penalty of two hundred pounds, and whether such penalty shall or shall not have been sued for or recovered, in case any of the said washings or other waste liquid, or noisome or offensive liquid, substances, or things, shall be emptied, drained, conducted, or conveyed, or caused or suffered to run or flow into any river, brook, or running stream, or any reservoir, canal, aqueduct, waterway, feeder, pond or springhead, or well, or into any drain, sewer, or ditch communicating with any of them, or any such annoyance, nuisance, injury, damage, act, or thing shall be done or caused to be done as aforesaid, and notice thereof in writing shall have been given by any person or persons to whom the same shall belong, or by any other person or persons whomsoever, to the said body or bodies politic or corporate, company or companies of proprietors, or any of them, or other the

person or persons making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within any parish, or part of a parish adopting the provisions of this Act, so offending, or to his, her, or their clerk or clerks, or to any person in his or their service or employ, and such body or bodies politic or corporate, company or companies of proprietors, or other person or persons, shall not, within twenty-four hours after such notice shall have been given to them or him as aforesaid, stop and hinder or prevent all and every such washings, waste liquids, or noisome or offensive liquids, substances, or things, from being emptied, drained, conducted, or conveyed, or from running or flowing, in manner aforesaid, and every such other annoyance, nuisance, injury, damage, act, or thing from being done as aforesaid, then and in every such case the said body or bodies politic or corporate, company or companies of proprietors, or other person or persons so offending, shall forfeit and pay the sum of twenty pounds for each and every day such washings, waste liquids, or noisome or offensive liquids, substances, or things, shall be so emptied, drained, conducted, or conveyed, or caused or suffered to run or flow, in manner aforesaid, or such other annoyance, nuisance, injury or damage, act or thing shall be so done or caused to be done as aforesaid; and such last-mentioned penalty shall and may be recovered and levied in such and the like manner as any other penalty or forfeiture is in and by this Act directed to be recovered and levied, and shall be paid to the informer, or to the person or persons who, in the judgment of the justice before whom the conviction shall take place, shall have sustained any annoyance, injury, or damage by any such Act.

51. That all and every the pipes or other conduits to be used or laid for the conveyance of gas, in, under, through, along, across, or round any road, street, or other place within the limits of any parish adopting this Act, shall be so laid at the greatest practical distance, and whenever the width of the

Gas pipes to be laid four feet from water pipes, and in a particular manner.

carriage-way in such street or place will allow thereof, at the distance of four feet at least from the nearest part of any water pipe already laid down or hereafter to be laid down for the conveyance of water in, under, through, along, across, or round any of the said roads, streets, or other places within the limits of any parish adopting this Act, excepting in cases where it shall be unavoidably necessary to lay the gas pipes across any of the said water pipes, in which cases the said gas pipes shall be laid over and above the said water pipes at the greatest practical distance therefrom, and shall form therewith a right angle, and in such cases the said gas pipes so crossing the said water pipes shall be at least nine feet in length, so that no joint of any of the said gas pipes shall be nearer to any part of the said water pipes than four feet at least; and in laying down the said gas pipes the said contractors or other persons supplying gas shall in no case join two or more gas pipes together previous to their being laid in the trench, but shall lay each pipe as near as may be in its place in the trench, and shall in such trench properly form the jointing with the other pipes to be added thereto with proper and sufficient materials, and shall also make and keep all and every such pipes, and all pipes connected and communicating therewith, and all the screws, joints, inlets, apertures, or openings therein respectively, air-tight, and in all and every respect prevent the said gas from escaping therefrom, upon pain of forfeiting for every offence the sum of five pounds.

To prevent escape of gas and contamination of water.

52. That whenever the water of any company of proprietors for supplying the inhabitants of any houses within the limits of any parish, part of a parish, or place adopting the provisions of this Act, with water, shall be contaminated by any of the gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish, part of a parish, or place adopting the provisions of this Act, the body or bodies politic or corporate, or person or persons, making, furnishing, or supplying such gas, shall for-

feit and pay the sum of twenty pounds, to be sued for and recovered, and shall be applied to and for the use and benefit of the said company supplying water as aforesaid ; and in case any such water shall be contaminated or affected by gas in any way whatsoever, then and in every such case the said company or other persons making, furnishing, or supplying such gas shall, within twenty-four hours next after the notice thereof in writing, signed by the treasurer or other officer of and for such water company as aforesaid, or by any person making use of such water, to be left at the usual place or office of transacting business of the said body or bodies politic or corporate, or other person or persons, cause the most proper and effectual measures to be taken to stop and prevent gas from escaping from their mains, works, or pipes, or contaminating or affecting the water of such company as aforesaid ; and in case the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying gas, shall not, within twenty-four hours next after such notice so left as aforesaid, effectually stop and prevent the gas from so escaping, and wholly and satisfactorily remove the cause of every such complaint, and prevent all and every such contamination whereof notice shall be given as aforesaid, that then the said body or bodies politic or corporate, or other person or persons as aforesaid, shall on each and every complaint forfeit and pay to the treasurer or other officer for the time being of such water company as aforesaid, for the use and benefit of the same company, over and above the before-mentioned penalty of twenty pounds, the sum of ten pounds for each and every day during which the water of the said last-mentioned company shall be and remain contaminated or affected by such gas ; and in default of payment thereof as aforesaid, such penalty or penalties shall and may be recovered by information, to be exhibited on the oath of one credible witness, by and in the name of the treasurer or other officer for the time being of the said water company as aforesaid, or by and in the name of any one or more

of the directors of the said company, at the option of the parties prosecuting such information against the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying gas, before any two justices of the peace, with costs, to be assessed by such justices, and to be levied by distress and sale of the goods and chattels of the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying such gas, together with the charges of such distress and sale, by warrant under the hand and seal of such justices, which warrant such justices are hereby empowered to grant; and such penalty or penalties, when so levied, shall be paid to the treasurer or other officer for the time being of such water company, for the use of such water company.

For ascertaining if the water be contaminated.

53. That in any case in which it shall be a question upon such complaint, whether the said water be contaminated or affected by the gas of the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of this Act, it shall be lawful for the company of proprietors, or other the owners or proprietors of any waterworks, to dig to and about and search and examine the mains, pipes, conduits, and apparatus of the said body or bodies politic or corporate, or other person or persons as aforesaid, for the purpose of ascertaining whether such contamination proceed or be occasioned by the gas of the said body or bodies politic or corporate, or other person or persons as aforesaid; and if it shall appear that the said water has been contaminated by any escape of gas as aforesaid, the costs and expences of the said digging, search, and examination, and of the repair of the pavement of the roads, street or streets which shall be taken up or disturbed, shall be borne and paid by the said body or bodies politic or corporate, or person or persons as aforesaid; which costs and expences of digging, search, and examination shall be ascertained and determined, if necessary, by such

justices as aforesaid, and be recovered in like manner as any penalty may be recovered by virtue of this Act: provided always, that if upon such examination it shall appear that such contamination has not arisen from any such escape of gas from any of the mains, pipes, or conduits of the said body or bodies politic or corporate, or other person or persons as aforesaid, then and in such case the said company of proprietors, or other the owners or proprietors of such waterworks, shall bear and pay all the costs and expences of such search, examination, and repair as aforesaid, and shall also make good to the said body or bodies politic or corporate, or other person or persons as aforesaid, any loss, injury, or damage which may be occasioned to the said mains, pipes, conduits, or apparatus of the said body or bodies politic or corporate, or other person or persons as aforesaid, in and by such search and examination, the amount of such injury, loss, or damage to be ascertained and determined by such justices of the peace as aforesaid.

54. That nothing in this Act contained shall extend to prevent any person from proceeding by indictment or otherwise against any of the officers, servants, or workmen of the body or bodies politic or corporate, or other person or persons whomsoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish adopting the provisions of this Act, in respect of any works or other means which shall be employed by them or any of them in making the said gas, and using the same in furnishing with lights as aforesaid, as a public or private nuisance, or from bringing any action against the said body or bodies politic or corporate, company of proprietors, or person or persons as aforesaid, or any of their officers, servants, or workmen, for any injury sustained by reason of any such works, or the use of the said gas, or the method of lighting therewith, whether such injury shall proceed from the preparation or the use of the same gas, or method of

Persons supplying gas liable to be indicted for a nuisance.

lighting, or the carelessness or want of skill of any of the persons employed therein, or from any other cause whatsoever.

Penalty for wilfully destroying or injuring lamps.

55. That if any person shall wilfully break, throw down, spoil, or damage any watch-house, watch-box, or lamp, lamp iron, lamp post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, it shall be lawful for any person or persons who shall see the offence committed, to apprehend, and also for any other person or persons to assist in apprehending, the offender or offenders, and by the authority of this Act, and without any warrant, and to deliver him or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable dispatch to convey him, her, or them before any justice of the peace; and such justice shall examine upon oath any witness or witnesses who shall appear to be produced to give evidence touching such offence; and if the party accused shall be convicted of any such offence, either by his, her, or their confession, or upon such evidence as aforesaid, he, she, or they shall forfeit any sum not exceeding forty shillings for every lamp, lamp iron, or lamp post so broken, thrown down, or damaged, and shall also make full satisfaction for the damage which shall have been done thereby, and not exceeding five pounds for any other such offence as aforesaid, and shall also make full satisfaction for the damage which shall have been done thereby; and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender, and the other moiety shall be applied for the purposes of this Act.

How persons accidentally breaking lamps are to be dealt with.

56. That if any person shall carelessly or accidentally break any of the said lamps, lamp irons, or lamp posts, or do any other such damage or injury as herein-before is mentioned, and shall not, upon demand, make satisfaction to the said inspectors for the damage or injury so done, it shall and may be lawful for any justice of the peace, upon any complaint thereof made to him upon oath, to summon the party complained of, and upon hearing the parties

upon both sides, or on the non-appearance of the party complained of, to examine the matter of complaint, and award such sum of money, by way of satisfaction to the said inspectors for such damage, as such justice shall think reasonable; and in case of neglect or refusal forthwith to pay such money, then the same and all expences attending the recovery thereof may be levied and recovered as any forfeiture is by this Act directed to be levied in the case of any person assaulting watchmen, &c.

57. That it shall be lawful for the said inspectors from time to time to enter into any contract or contracts with any person, company or companies whatsoever, for lighting the same streets, roads, and other places, or any of them, or any part thereof, either with oil or with gas, or with any other material, or in any other manner whatsoever, or for furnishing lamps, lamp irons, lamp-posts, watchboxes, posts, chains, pales, rails, and other things necessary for the purposes aforesaid, or any materials for the same, which contract or contracts shall specify the several works to be done and the prices to be paid for the same, and the time or times when the works shall be completed, and the penalties to be suffered in cases of non-performance thereof, and shall be signed by two or more of the said inspectors, and also by the person or persons contracting to perform such works respectively, which contract or contracts, or a copy or copies thereof, shall be entered in a book to be kept for that purpose; but no contract above the value or sum of twenty pounds shall be entered into, unless previous to the making of any such contract fourteen days' notice shall be given in one or more of the public newspapers published in the county in which the said parish shall be situate, expressing the intention of entering into such contract, in order that any person or persons willing to undertake the same may make proposals for that purpose, to be offered and presented to the said inspectors at a certain time and place in such notice to be mentioned: provided always, that if the said inspectors shall be of opinion that it will not be

Power for inspectors to contract for the works directed to be done by this Act.

advantageous to contract with the person or persons offering the lowest price, it shall be lawful for the said inspectors to contract with such other person or persons as they shall think proper.

Inspectors
may sue for
breach of
contract ;

58. That in case the same shall not be well and sufficiently performed, according to the terms, intent, and meaning of such contract or contracts, or shall not be finished or completed at or within the time or times specified in such contract or contracts, then the said inspectors may cause an action to be brought in any of his Majesty's courts of law at Westminster, against any such contractor, for any penalty contained in his contract ; and on proof of his signing the said contract or contracts, or non-performance thereof at the time or times for that purpose to be therein mentioned, the said inspectors shall be entitled to and recover the full penalty contained in any such contract, which, when recovered, shall be applied for the purposes of this Act : provided always, that it shall be lawful for the said inspectors (if they think fit) to compound and agree with any contractor for any penalty incurred by him for the breach or non-performance of any such contract, for such sum of money as the said inspectors shall think proper, not being less than the injury or damage sustained by the breach or non-performance of such contract, and all costs, charges, and expences which shall be occasioned thereby ; and it shall be lawful for the said inspectors to cancel or make void any contract with any person or persons whomsoever, by mutual consent, if they shall think proper.

or may com-
pound with
contractor.

Inspectors
may purchase
or rent
ground or
buildings for
the purposes
of this Act.

59. That the said inspectors may treat with the owner or owners and occupier or occupiers of any houses, buildings, lands, and grounds, for the purposes of this Act, for such sum or sums of money, or yearly rent, or for such time as to them shall appear reasonable, (which sum or sums of money and yearly rent shall be respectively paid out of the monies to arise by virtue of this Act,) in such place or places as they may think proper.

Property of
lamps, &c.

60. That the property of and in all lamps, lamp irons, lamp-posts, watch-houses, watch-boxes, posts,

chains, pales, and rails in, about, or belonging to the said streets and places within any parish or part of a parish adopting the provisions of this Act, or any of them, and of and in all the iron, timber, stone, bricks, and other materials and furniture and things of, in, and belonging thereto, (except when the same shall be otherwise regulated by contract with the said inspectors,) shall be and the same are hereby vested in the said inspectors, and may be sold and disposed of from time to time as they shall think proper; and the money arising from such sale or sales shall be applied towards the purposes of this Act; and the said inspectors are hereby authorized and empowered to bring or cause to be brought any action or actions in such name or names and in manner as herein is provided, or to prefer or order and direct the preferring of any bill or bills of indictment, against any person or persons who shall steal, take, or carry away (as the case may be) all or any part of such lamp irons, lamp posts, watch-houses, watch-boxes, iron, timber, and stone, bricks, furniture, posts, chains, pales, rails, or other materials and things as aforesaid; and in all such actions or bills of indictment it shall be and be deemed and taken to be sufficient to state generally that the article or articles, thing or things, is or are the property of the inspectors.

61. That it shall be lawful for such inspectors to unite with the inspectors of any adjoining parish or parishes, for the better carrying into effect the purposes of this Act.

Inspectors of adjoining parishes may unite.

62. Justices of the peace before whom any person shall be convicted or prosecuted for any offence against this Act shall cause the information and conviction to be drawn in the form following, or to the same effect:

Forms of information and conviction.

"County of } Be it remembered, that on the
 } day of A. B. of
 to wit. } informeth of his
 Majesty's justice [or justices] of the peace for the
 said of that
 of in the of [here
describe the offence, with the time and place, and fol-

Form of information.

low the Act as near as may be], contrary to the provisions of an act made in the year of the reign of King *William* the Fourth, intituled [*insert the title of this Act*], which hath imposed a forfeiture of for the said offence. Taken the

day of before ."

Form of conviction.

"*County of* } Be it remembered, that on the
day of in the
to wit. } year of the reign of and
in the year of our Lord *A. B.* is convicted before of his Majesty's justice
[or justices] of the peace for the said
for [*here specify the offence, and when and where committed*], contrary to the form of the statute made in the year of the reign of King *William* the Fourth, intituled [*here set forth the title of this Act*]; and do hereby declare and adjudge that the said hath forfeited for the said offence the sum of [or shall be committed to for the space of as the case may be]. Given under hand and seal the day and year first above written."

Recovery and application of penalties.

63. That all fines, penalties, and forfeitures inflicted or imposed by this Act, or by virtue of any rule or order made in pursuance hereof (the mode of recovery whereof is not herein otherwise provided for), may in case of non-payment thereof be recovered in a summary way, by order and adjudication of any two justices of the peace, on complaint to them for that purpose exhibited, and afterwards be levied, as well as the costs (if any) of such proceedings, on nonpayment, by distress and sale of the goods and chattels of the offender or respective offenders, or person or persons liable to pay the same, by warrant under the hands and seals of such justices, who are hereby authorized and required to summon and examine any witness upon oath or affirmation of and concerning such offences, matters, and things, and to hear and determine the same; and the overplus (if any) of the money raised or recovered, after discharging the fine, penalty, or forfeiture for which such warrant shall be issued, and the costs and ex-

pences of recovering and levying the same (if any such there be), shall be rendered to the owner or owners of the goods and chattels so seized and distrained; all which penalties, not herein directed to be otherwise applied, shall be paid to the said inspectors or their treasurer, to be applied for such purposes of this Act as the said inspectors shall order and direct, except in all such cases where the penalty or forfeiture shall be incurred by the said inspectors, and then the same shall be paid to the informer; and it shall be lawful for the said justices to order the offender or offenders so convicted to be detained in safe custody until return can be conveniently made to such warrant or warrants of distress, unless the said offender or offenders shall give sufficient security, to the satisfaction of such justices, for his, her, or their appearance before the said justices on such day or days as shall be appointed for the return of such warrant or warrants of distress, such day or days not being more than seven days from the time of taking such security, and which security the said justices are hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant or warrants it shall appear that no sufficient distress can be had whereupon to levy the said penalty or penalties, and such costs as aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of any such justices, upon the confession of the offender or offenders, or otherwise, that he, she, or they have or hath not sufficient goods and chattels whereupon such penalties, forfeitures, costs, and expences can be levied if a warrant of distress were issued, such justices shall not be required to issue such warrant of distress, and thereupon it shall be lawful for such justices, and they are hereby required and empowered, by warrant or warrants under their hands and seals, to commit such offender or offenders to the common gaol or house of correction in the said county or place in which the said parish shall be situate, there to be kept, with or without hard labour, without bail or mainprize, for any time not exceeding six calendar

months, or until such offender or offenders shall have paid such penalty or penalties and all costs and charges attending such proceedings as aforesaid, to be ascertained by such justices, or shall otherwise be discharged by due course of law.

Inspectors
exempted
from per-
sonal liabi-
lity.

64. That nothing herein contained shall extend to render the said inspectors personally, or any of their goods and chattels (other than such as may be invested in them in pursuance of this Act), liable to the payment of any sum or sums of money as or by way of compensation or satisfaction in the cases in which such compensation or satisfaction is directed to be made by the said inspectors.

Inhabitants
may be wit-
nesses.

65. That no inhabitant of any parish adopting this Act shall be deemed an incompetent witness in any action, &c.

Appeal to the
quarter ses-
sions against
order of in-
spectors, &c.

66. That if any person or persons shall find himself, herself, or themselves aggrieved by any order, direction, or appointment of the said inspectors, or any order or conviction of one or more justice or justices of the peace, it shall be lawful for such person or persons to appeal to any general or quarterly sessions of the peace to be held in and for the county, city, riding, borough, town, shire, division, liberty, or place in which the parish shall be situate, within four calendar months next after the cause of complaint shall have arisen, or if such sessions shall be held before the expiration of one calendar month, then such appeal shall be made to the secondly succeeding sessions, either of which court of sessions is hereby empowered to hear and finally determine the matter of the said appeal, and to make such order therein as to them shall seem meet, which order shall be final and conclusive to and upon all parties; provided that the person or persons so appealing shall give or cause to be given at least fourteen days' notice in writing of his, her, or their intention of appealing as aforesaid, and of the matter or cause thereof, to the said inspectors, or other the respondent or respondents, that within five days after such notice they shall enter into a recognizance before some justice of the peace, with sufficient secu-

rities, conditioned to try such appeal at the then next general sessions or quarter sessions of the peace, which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions or any adjournment thereof; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper; and their determination in or concerning the premises shall be conclusive and binding on all parties.

67. That if any person or persons shall find himself, herself, or themselves aggrieved by any rate made by the overseers of the poor for the purposes of this Act, he, she, and they may appeal to any general or quarterly sessions of the peace to be held in and for the county, city, riding, borough, town, shire, division, liberty, or place in which the parish shall be situated; and all such appeals shall be subject to the same rules, regulations, provisions, and directions, and shall be prosecuted and proceeded with in the like manner, as appeals against rates made for the relief of the poor in such parish.

Appeals against rate to be subject to same rules as appeals against poor-rates.

68. That no plaintiff or plaintiffs shall recover in any action or actions for any irregularity, trespass, or other proceedings made or committed in execution of this Act, if tender of sufficient amends shall be made by or on behalf of the party or parties who shall have committed any such irregularity, trespass, or wrongful proceedings before such action brought; and in case no tender shall have been made, it shall be lawful for the defendant or defendants in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he or they shall think fit, whereupon such proceedings, order, and adjudication shall be made, had, and given in and by such court, as in other actions where the defendant is allowed to pay money into court.

Plaintiff not to recover in any action after tender of sufficient amends.

69. That no action or suit shall be commenced against any person or persons for any thing done in

Limitation of actions.

pursuance of or under the authority or colour of this Act until twenty-one days' notice has been given thereof in writing to the said inspectors, nor after sufficient satisfaction or tender thereof has been made to the party or parties aggrieved, nor after six calendar months next after the fact committed for which such action or actions, suit or suits, shall be so brought; and every such action shall be brought, laid, and tried where the cause of action shall have arisen, and not in any other county or place; and the defendant or defendants in such actions or suits may plead the general issue, or give this Act and any special matter in evidence, at any trial or trials which shall be had thereupon; and if the matter or thing shall appear to have been done under or by virtue of this Act, or if it shall appear that such action or suit was brought before twenty-one days' notice thereof was given as aforesaid, or if any action or suit shall not be commenced within the time before limited, or shall be laid in any other county or place than as aforesaid, then the jury or juries shall find a verdict for the defendant or defendants therein; and if a verdict or verdicts shall be found for any such defendant or defendants, or if the plaintiff or plaintiffs in such action or actions, suit or suits, shall become nonsuit, or suffer a discontinuance of such action or actions, or if, upon any demurrer or demurrers in such action or actions, judgment shall be given for the defendant or defendants therein, then and in any of the cases aforesaid such defendant or defendants shall have double costs, and shall have such remedy for recovering the same as any defendant or defendants may have for his, her, or their costs in any other case by law.

Proceedings
not to be un-
lawful for
want of form.

70. That no proceedings taken in pursuance of this Act shall be quashed or vacated for want of form, or be removed by certiorari, or any other writ or process, into any of his Majesty's courts of record at Westminster or elsewhere.

Parishes may
adopt only
parts of act.

71. That the provisions of this Act may be adopted in any parish either as to lighting or as to watching, or as to lighting and watching, as may be deemed

expedient; and that the provisions of this Act may be adopted in any parish so far as the same relate to lighting, although such parish shall be watched under or by virtue of any Act of Parliament passed for that purpose, and may be adopted in any parish so far as the same relate to watching, although such parish shall be lighted under or by virtue of any Act of Parliament passed for that purpose.

72. That nothing in this Act contained shall extend to abridge or interfere with the provisions contained in an Act made and passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled, *An Act for improving the Police in and near the Metropolis*, or to extend to any parish or place already regulated by or under the provisions of any Act of Parliament for all the purposes hereinbefore provided for, or to interfere with the powers which any corporate body may have with respect to watching and lighting.

Limiting the powers of the Act.

10 Geo. 4. c. 44.

73. That it shall be lawful for the inhabitants of part of any parish to hold a meeting of the inhabitants of such part, to be convened in manner herein directed, and to be composed of such inhabitants only, for the purpose of determining whether the provisions in this Act contained, or any of them, shall be adopted and carried into execution in such part of the said parish; and that all such meetings shall be subject and liable to all the clauses, regulations, and restrictions in this Act contained in respect of meetings to be convened for the purposes thereof; and that the churchwardens of the said parish shall act in the same manner for such part of the parish the inhabitants of which may be desirous of adopting the provisions of this Act, for carrying the provisions of the same into effect, as they could by virtue hereof act for the parish at large; and that the overseers of the poor of the said parish, or of any township or division of the said parish, shall be amenable to the provisions of this Act, so far as they may relate to the part of such parish situate within or partly within the division or district for which such overseers shall act, for the purpose of levying,

Parts of parishes may adopt the provisions of this Act.

but not to
interfere with
any local act.

Surveyor of
commission-
ers of sewers
may enter
into gas-
works, to see
if there be
any escape of
gas, &c.

raising, and paying the rates within the part of such parish adopting the provisions of this Act, in the same manner as they would be if the whole parish, township, or place for which they act, had adopted the provisions of this Act: provided always, that no proceedings of the said inhabitants, nor any rate to be raised in pursuance of such proceedings, shall extend to any part of the said parish which may already be regulated by any Act for the purposes in this Act mentioned, nor interfere with the provisions of such Act or the execution thereof.

74. That it shall be lawful for any surveyor or other person or persons acting under the authority of commissioners of sewers, at any time or times in the daytime, to enter into any manufactory, gasometer, receiver, or other building belonging to any gas company or companies, or the said inspectors, in order to inspect and examine if there be any escape of gas, or any washings, or other waste liquids, substances, or other things whatsoever, which shall arise or be produced in the prosecution of the said gas works, or in the manufacture or process of making or procuring such gas, into any public sewer or drain; and if such surveyor or other person or persons acting by or under the authority of commissioners of sewers shall at any such time or times be refused admittance or entrance into any such manufactory, gasometer, receiver, or other building, for the purpose of making such inspection and examination as aforesaid, or on being admitted shall be obstructed in or prevented from making such inspection and examination as aforesaid, the said gas company or companies, or the said inspectors, so offending, shall forfeit for every such offence the sum of twenty pounds.

75 and 76. Act not to prejudice the rights of the commissioners of sewers; nor to affect the universities.

LORD'S DAY,—See SUNDAY.

The Lord's Supper.

By the ancient canon law, all lay parishioners, qualified by their godly living, were required to communicate at least thrice in the year; viz. at Easter, Whitsuntide, and Christmas; and the secular clergy not communicating at those times were not to be reckoned among Catholics. (*Gibbs. Cod.* 387.)

The Communion, or Lord's Supper.

Where required to communicate by the canon law.

And by the 24th canon of the Church, it is ordained that all deans, heads of cathedral and collegiate churches, vicars, petty canons, and all others of the foundation, shall receive the communion four times in the year, at the least.

By the 71st canon it is forbidden to communicate this holy sacrament in private houses, except in times of necessity, to the dangerously sick and impotent.

Not to be solemnized in private houses, except in imminent cases.

The 82d canon enjoins that in all churches convenient and decent communion tables be provided, which shall be kept in a seemly condition, covered, in time of divine service, with a carpet of silk, or other decent stuff, and at the time of ministration, with a fair linen cloth; at which time the table shall be so placed that the minister may be conveniently heard, &c.

All churches to have communion tables, &c.

The churchwardens are to provide a sufficient quantity of fine white bread, and of good wholesome wine, with the advice of the minister, at the expense of the parish.

Churchwardens to provide bread and wine.

And if, after ministration any remain unconsecrated, the curate shall have it to his own use; but all that is consecrated must be eat and drank in the church.

Bread and wine not used.

The minister is to give notice of the communion service on the Sunday, or some holiday, immediately preceding the day on which it is intended to be celebrated; and those who intend to be partakers shall signify their intention some time the day before the communion. But if there be not a convenient number to communicate, there shall be no celebration; and there must be *four*, or *three* at the least, even where the parish contains no more than twenty persons qualified to receive the communion. (*Burn's Eccl. Law.*)

Minister to give notice of the celebration of the communion.

Marriage.

Marriages
prior to 1754.

Previously to the year 1754, the date of the first Marriage Act, all marriages in England were regulated by the canon law, by which, modes of contracting matrimony other than in the face of the church were acknowledged. In Scotland the celebration of marriage is still governed by the principles of the ancient canon law.

Now only one
form of mar-
riages.

In England there is but one form of contracting marriage, and all marriages not celebrated according to that form are *void*; with an exception, however, in favour of Jews and Quakers, where both parties are of the same persuasion.

Jews and
Quakers.

Marriages
voidable and
void.

No marriage is *void*, by the temporal law, if it be celebrated by a person in holy orders, in a parish church, or public chapel (or elsewhere, by special license), in pursuance of banns or a license, between single persons, both consenting, of sound mind; of the age of 21 years, without other consent; or of the age of 14 in males and 12 in females, with the consent of parents or guardians. And no marriage is *voidable*, by the ecclesiastical law, either during life, or after the death of either of the parties, unless for the impediments of pre-contract (now obsolete,) of consanguinity, affinity, or corporal imbecility subsisting previously to the marriage.

The terms
voidable and
void ex-
plained.

In order to a perfect understanding of terms, it may be necessary to explain that a *voidable* marriage is one which is not void, but which may be made so. It is valid for all civil purposes, until its invalidity be established, and its nullity declared by a sentence. The jurisdiction of the ecclesiastical courts over such marriages ceases with the life of either of the parties, and a sentence dissolving a voidable marriage can only be pronounced during the lifetime of both husband and wife. On the other hand, a marriage originally *void* is at all times a nullity, whether declared during the lifetime of the parties or not. If persons disqualified illegally unite themselves under the form of matrimony, or being qualified, neglect the forms required by law to be observed, the state of

such persons does not form a matrimonial but a meretricious contract ; in which case the sentence of the ecclesiastical court does not dissolve the marriage, inasmuch as no lawful marriage can have taken place ; it merely declares the *fact of marriage to be a nullity*. Though, if a fact of marriage be proved, even such a marriage is *prima facie* to be deemed valid, until the contrary be shown.

Prior to the passing of the 26 Geo. 2. c. 33. (the Marriage Act of 1754) the publication of banns was merely an ecclesiastical regulation, adopted for the purpose of ascertaining whether the persons about to be married were free from all lawful impediments. But that statute renders the ceremonial of banns indispensable, in all cases in which a license is not obtained. The 26 Geo. 2. c. 33. was amended by the 4 Geo. 4. c. 17, and both those statutes were repealed by the 4 Geo. 4. c. 76, the last Marriage Act, which is entitled "An Act for amending the Laws respecting the Solemnization of Marriage in England." Marriage by banns.

By the 2d section of the last-mentioned Act it is enacted, that all banns of matrimony shall be published in an audible manner, in the parish church, or in some public chapel, in which banns may lawfully be published, of the parish or chapelry wherein the persons to be married shall dwell, according to the form of words contained in the Book of Common Prayer, upon three Sundays preceding the solemnization of marriage, during morning service, (or evening service, if there shall be no morning service on the day of publication), immediately after the second lesson ; and if the persons to be married shall dwell in different parishes or chapelries, the banns shall be published in the church or chapel of the parish or chapelry wherein each person shall dwell ; and in all cases where banns have been published, the marriage shall be solemnized in one of the parish churches or chapels in which such banns were published, and in no other place. Publication of banns.

By the 7th section no clergyman shall be obliged to publish the banns of marriage, unless the persons to be married shall, seven days at least be- Notice before publication.

fore the first publication, deliver or cause to be delivered to him, a notice in writing of their true christian and surnames, of their respective residences, and of the time they have occupied such residences. This notice of seven days, however, does not appear to be indispensable, unless required by the minister, who, under the Act, is not obliged to publish banns within that period: and as regards other requisites (except the true names of the parties) a misrepresentation of the parish and residences, although highly reprehensible, cannot, after the marriage has taken place, affect its legality, or be urged against its validity.

Minors married by banns without consent.

The 8th section enacts, that ministers who shall, after publication of banns, happen to solemnize the marriage of a minor without the consent of parents or guardians, shall not be punishable by ecclesiastical censures, unless they had notice of dissent; and that when dissent is publicly declared the banns shall be void.

Republication of banns.

The 9th section requires a republication of the banns if the marriage be not solemnized within three months after a complete publication.

Marriages other than by banns or license void.

The 10th section renders null and void, to all intents and purposes, the marriages of all persons (Jews and Quakers excepted) who shall knowingly and wilfully intermarry without due publication of banns (unless by license).

Marriage by license.

Persons not married by banns must be married by license, and marriage licenses are either *common* or *special*.

Common license.

A common license is a dispensation, by virtue of which marriage is allowed to be solemnized in a church or chapel without the publication of banns.

Proviso for special license.

The 10th section of the last Marriage Act enacts, that no license for marriage shall be granted for its celebration in any other church or chapel than in that of the parish or chapelry within which one of the persons to be married shall have resided for the term of fifteen days immediately preceding the granting of the license; but by the 20th section a reservation is made, conferring on the Archbishop of Canterbury

the privilege of dispensing with time and place by special license.

A *common* license, therefore, merely dispenses with the publication of banns; the prescribed hours for marrying, and the place, must be rigidly observed. A *special* license dispenses with the banns, and also with time and place. The same form is used in granting the one as the other, the only material difference consisting in the additional words introduced into the special license permitting the marriage to be solemnized, "*at any time, in any church or chapel, or other meet or convenient place.*"

Difference between common and special licenses.

Special licenses are restricted to persons of condition: indeed, a regulation, dated January 15, 1759, was made by Archbishop Secker, ordaining that such licenses should only be granted to peers, or peeresses in their own right, their sons or daughters, dowager peeresses, privy councillors, the judges of Westminster-hall, baronets, knights, and members of Parliament. But notwithstanding this regulation, it has been usual for the Archbishop of Canterbury to grant occasional favours beyond these limits.

Special licenses, to whom granted.

Licenses can only be granted by persons having episcopal authority; and previously to the passing of the 4 Geo. 4. security in the form of a bond was required from the person obtaining the license, for compliance with the conditions set forth in certain canons. This bond having added greatly to the expense, and but little to the security it was intended to afford, the 15th section of the new Act provided that persons applying for licenses should not be required to give any security, by bond or otherwise.

By whom licenses are granted.

Bond dispensed with.

By the 14th and 15th sections of the Marriage Act (as well as by the canon law) licenses can only be granted on affidavit made by the person requiring the license "that there is no impediment of kindred or alliance, or any other lawful cause, nor any suit commenced in any ecclesiastical court, to bar or hinder the proceeding of the said matrimony, according to the tenor of the said license; and that one of the parties hath, for the space of fifteen days imme-

Affidavit necessary.

diately preceding such license, had his or her usual place of abode within the parish or chapelry within which the marriage is to be solemnized ;" also, where either of the parties (not being a widower or widow) is a minor, that the consent of the father, or if he be dead, of one of the guardians of such minor—or if there be no guardian, then of the mother, if unmarried—or if no mother unmarried, then of the guardians appointed by the Court of Chancery, if consenting in fact—hath been obtained to the marriage. And if there be no person authorized to give consent, then, upon oath to that effect by the party requiring the license, the same may be granted though such consent be wanting.

Proviso if
parents, &c.
of minors be
of unsound
mind, &c.

By the 17th section of the Act it is provided, that where the fathers of the persons (minors) to be married, or one of them, shall be of unsound mind ; or the guardian or guardians, mother or mothers, or any of them, whose consent is necessary to the marriage of a minor, shall be of unsound mind, or in parts beyond the seas, or shall unreasonably, or from undue motives, withhold consent to a proper marriage ; it shall, in such cases, be lawful for any person desirous of marrying, to apply by petition to the Lord Chancellor ; and if the marriage shall appear proper, it shall be judicially declared so by the Court, the order of which shall be held a valid consent.

Licenses li-
mited as to
time.

Licenses are limited as to time, and on this point it is provided by the 19th section of the Act, that where marriages shall not be celebrated within three months after the grant of a license, no minister shall solemnize such marriages until a new license be obtained, unless by banns.

The celebra-
tion of mar-
riage.

It is enjoined by the last Marriage Act, that all the regulations prescribed by the rubric, as prefixed to the Office of Matrimony in the Book of Common Prayer, concerning the solemnization of matrimony, (not thereby altered) shall be duly observed.

Form, time,
and place of
solemniza-
tion.

Hence the ceremony is to be performed (except when time and place are dispensed with by a special license) in the church or chapel wherein the banns have been published, or in the church or chapel spe-

cified in the license, by a priest in holy orders, and, agreeably to ancient injunctions, in the presence of two witnesses at least, who, as well as the minister and the parties married, are to subscribe a certificate as directed by the 28th section of the Act. This certificate is to state at length the names of the parties married, the parish or parishes in which they reside, distinguishing whether they were married by banns or license, and whether or not with the consent of parents or guardians. It is to be dated, and signed, first by the priest and the parties married, and then by the two witnesses.

Witnesses.

Certificate.

All marriages (except by special license) are to be solemnized *between the hours of eight and twelve in the forenoon*; and by the 21st section of the 4 Geo. 4. c. 76. any person knowingly and wilfully solemnizing matrimony in any other place than a church or public chapel, wherein banns may lawfully be published, or at any other time than between the hours of eight and twelve in the forenoon, unless by special license, shall be adjudged guilty of *felony*, and transported for the term of fourteen years.

Prescribed hours.

By the 5 Geo. 4. c. 32. it is enacted, That all marriages solemnized in any place within the limits of a parish or chapelry, licensed for the performance of divine service, during the repair or rebuilding of the church or chapel wherein marriages have been usually solemnized, or if no such place has been licensed, then in a church or chapel of an adjoining parish or chapelry in which banns are usually proclaimed, whether by banns or by license, shall not have their validity called in question on such account, nor shall the ministers be liable to ecclesiastical censures. And all banns published, and marriages solemnized, in any place licensed as aforesaid, shall be considered as proclaimed and solemnized in the church or chapel of such parish or chapelry, and registered accordingly.

Marriages solemnized during the repair or rebuilding of church or chapel.

And by the 6 Geo. 4. c. 92. it is provided, that all marriages solemnized in any church or public chapel erected since the 26 Geo. 2. c. 33. and consecrated, in which it has been usual to solemnize

Marriages in new churches.

marriage, shall be as valid as if they had been celebrated in churches or chapels having chapelries annexed, and wherein banns had usually been published before the passing of the said Act, 26 Geo 2. ; and marriages in future, so solemnized, shall be in like manner valid, and the registers thereof legal evidence. (s. 1, 2, & 3.)

Fees for marrying.

The fees payable for marrying, like those for baptism, can be claimed by *custom* only, as none is due to the clergyman of *common right* for performing the marriage ceremony. (*Lutw.* 1059 ; *Raym. Rep.* 1558.)

Expense of license.

The expense of a common license for marriage is about 2*l.* 2*s.* ; the stamp thereon, by 55 Geo. 3. c. 184. being 10*s.*

Stamp on certificate.

By the same Act the stamp on a certificate of marriage, for legal purposes, (except of any common soldier, seaman, marine) is 5*s.*

For other particulars, as the impediments to matrimony, the prohibited degrees of consanguinity, breach of promise, crim. con., cruelty, &c. &c. which do not come within the scope of this Dictionary, the reader may be referred with confidence to a familiarly-written, interesting, and most valuable little volume, by a Solicitor, entitled, "A Compendium of the Law of Husband and Wife," 1831. 8vo. 8*s.*

Militia.

Militia Act.
42 Geo. 3.c.90.

The Act entitled "An Act for Amending the Laws relating to the Militia in England, and for Augmenting the Militia," c. 90. passed in the 42d year of the reign of George 3. recites, in its first section, the necessity of consolidating the laws relative to the militia ; repeals all the enactments before existing on the subject, and re-enacts them, with such alterations and additions as appeared advisable.

Lieutenants
of counties to
be appointed;

Sect. 2 enacts, that his Majesty may appoint lieutenants for counties, ridings, &c. ; such lieutenants, to have full power and authority to call together, arm, array, and cause to be trained and exercised, such persons, and in such manner, as is hereafter

directed, once in every year; and the same lieutenants shall appoint deputy-lieutenants, and a proper number of colonels, lieutenant-colonels, majors, and other officers, to train, discipline, and command, the persons to be so armed and arrayed; and the officers so appointed for the militia shall rank with his Majesty's regular forces as youngest of their rank.

Who may appoint deputies, and the officers of militia.

How officers to rank.

3. Three deputy-lieutenants may be authorized to act when the lieutenant shall be out of the kingdom, or where there is none.

Deputy-lieutenants to act in absence of lieutenant.

4. Commissions shall not be vacated by the revocation of the power of the grantor.

Commissions.

5. The lieutenant of every county, &c. shall have the chief command of the militia within the place to which he is appointed; and twenty deputy-lieutenants at the least shall be appointed within every county, riding, and place, if so many can be found qualified as hereinafter directed; but if such number cannot be found, then as many as can be.

Lieutenant of each county to have chief command of militia.

Deputies to be appointed in each county, &c.

6. All persons appointed deputy-lieutenants, or officers of the militia, (except in Cumberland, Huntingdon, Monmouth, Westmorland, and Rutland, the Isle of Ely, the counties and places in Wales, and in such cities and towns as are counties within themselves,) shall be qualified as follows:—Every deputy-lieutenant shall be possessed of a freehold, copyhold, or customary estate for life, or for the life of his wife, of the yearly value of 200*l.* or be heir-apparent of some person possessed of a like estate of the yearly value of 400*l.*; every colonel shall have a like estate of the yearly value of 1000*l.* or be heir-apparent of some person possessed of a like estate of the yearly value of 2000*l.*; every lieutenant-colonel shall have a like estate of 600*l.* per annum, or be heir-apparent of a person possessed of a like estate of 1200*l.* per annum; every major shall have a like estate of 400*l.* per annum, or be heir-apparent of some person possessed of a like estate of 800*l.* per annum; every captain shall be possessed of a like estate of 200*l.* per annum, or be heir-apparent of some person possessed of a like estate of 400*l.* per annum, or, be a younger son of some person having died possessed

Qualifications of deputy-lieutenants, and officers of the militia.

Of Deputy-Lieutenant.

Of Colonel.

Of Lieutenant-Colonel.

Of Major.

Of Captain.

Of Lieutenant.

of a like estate of 600*l.* per annum; every lieutenant shall have a like estate of 50*l.* per annum, or be possessed of a personal estate of 1000*l.* or of real and personal estate of 2000*l.* or be son of some person being or having died possessed of a like estate of 100*l.* per annum, or a personal estate alone of 2000*l.* or of real and personal estate together of 3000*l.*; and every ensign shall be possessed of a like estate of 20*l.* per annum, or of personal estate of 500*l.* or real and personal estate of 1000*l.* or be son of some person being or having died possessed of a like estate of 50*l.* per annum, or being or having died possessed of a personal estate of 1000*l.* or real and personal estate together of 1500*l.*; which said estates shall be within the counties, ridings, or places, in which such officers shall be appointed to serve.

Qualifications in Wales, &c.

Sect. 7 and 8 contain the qualifications of deputy-lieutenants and officers in Cumberland, &c. Wales, and the Isle of Ely.

Chief magistrate to appoint in cities being counties, &c.

Sect. 9 enacts, that in cities and towns being counties within themselves, where there is no lieutenant appointed, the chief magistrate shall appoint the deputy-lieutenants and officers of the militia.

Leases for lives, how to be estimated.

By s. 10 leases for lives of 300*l.* per annum are to be deemed equal to a qualification hereinbefore required of 100*l.* per annum, and so proportionally.

Estates for 20 years.

11. Estates granted for twenty years, of an annual value equal to the value of estates required for qualifications, shall be sufficient.

Qualifications to be delivered to the clerk of the peace;

12. No deputy-lieutenant, or any officer superior to a subaltern, shall be appointed till his qualification be delivered to the clerk of the peace, who is to transmit a copy to the county lieutenant.

Who shall enrol them, &c.

13. The clerk of the peace shall enter qualifications on a roll, and insert in the London Gazette dates of commissions, &c. and transmit, every January, to the Secretary of State, an account of qualifications, to be laid before Parliament. Deputy-lieutenants and officers to take the oaths, &c. within six months after appointment.

Oaths.

Penalties for acting without qualification.

14. Any person executing any powers under this Act, not being qualified, or without having delivered

in such specific description of his qualification as hereinbefore required, shall incur the following penalties : deputy-lieutenants, colonels, lieutenant-colonels, or majors, 200*l.*, one moiety (100*l.*) to the person who shall sue ; and the proof of qualification shall lie upon the person against whom the action is brought ; provided that peers, or their heirs-apparent, may act, though not possessed of qualifications.

Peers, and
their heirs-
apparent.

15 and 16 contain regulations applicable only to officers serving at the time of passing the Act, in 1802.

17. His Majesty may direct county lieutenants to displace deputy-lieutenants or officers, and to appoint others in their stead.

King may
displace
officers, &c.

18. County lieutenants and deputies are empowered to appoint clerks of their meetings.

County lieutenants to
appoint clerks.

20. The number of private militia-men shall, from time to time, once in every successive ten years, be settled, ascertained, and appointed, by his Majesty's privy council.

Number of
privates, how
to be settled.

21. Contains regulations for holding general meetings of lieutenancy, one meeting at least to be holden annually, on the last Tuesday before October 10, or earlier, if required ; meetings to be advertised in the London Gazette and county newspapers 14 days prior to day of meeting ; expenses of advertisements, &c. to be paid by treasurer of county.

Meetings of
Lieutenancy.

22. Authorizes sub-division meetings, to consist of two deputy-lieutenants at the least, or one deputy and a justice of the peace.

Sub-division
meetings.

23. The clerks of the sub-division meetings shall give notice in writing of the time and place of meeting, and an account of the several days fixed for receiving lists, and for balloting and enrolling the militia-men ; and shall, as soon as the militia-men are enrolled, transmit to the colonel or other commanding-officer a list, specifying the names, trades, and usual abodes of all such militia-men ; and where there are substitutes, the names, trades, and places of abode, of the persons for whom such substitutes were enrolled.

Notices of
meetings,
lists, &c.

Meetings to be postponed in absence of deputy-lieutenants, &c.

What to be done at general meetings.

Constables to give notices to occupiers and lodgers, requiring returns of men between 18 and 45.

Penalty for not making returns.

Quakers.

Constables, after receiving returns,

24. When two deputy-lieutenants, or one and a justice, do not attend, another meeting is to be appointed, by notice from the clerk.

25. General meetings are to appoint sub-division meetings, and to require chief constables, &c. to return to the deputy-lieutenants, at the places and on the days appointed at the first general meeting in every year, fair and true lists in writing of the names of all men usually and at that time dwelling within the respective parishes for which they shall respectively act, between the ages of eighteen and forty-five years.

26. The several constables, &c. shall, within 14 days after such returns shall be required, give notice in writing to every occupier of every dwelling-house (or where such dwelling-house shall be divided into different stories or apartments, and occupied distinctly by several persons, then to or for the occupier of each distinct story or apartment), to prepare or produce, within 14 days next ensuing the date of such notice, a list in writing, to the best of his or her belief, of the christian and surname of each and every man residing in such dwelling-house, or distinct story or apartment, between the ages of eighteen and forty-five, distinguishing every person in such dwelling-house, or distinct story or apartment, of such age as aforesaid, claiming to be exempt from serving in the militia, together with the ground of every such claim of exemption; and every such notice shall mention the day, time, and place, appointed for hearing appeals, by persons claiming to be exempt; and every occupier shall, after such notice, make out such list, sign, and deliver the same to such constable, &c.; and every occupier not duly delivering lists, or making false returns, shall forfeit 5*l*.

27. Quakers are to produce certificates of their persuasion, and in such cases constables, &c. shall make returns of persons liable to serve in such houses, as where returns are not made to notices.

28. Constables, &c. shall, within one month after having delivered such notices, make out a true list

in writing of the names of all the men dwelling within their respective parishes, between the ages of eighteen and forty-five, as well those who have not made any return, or been returned, as of those who have, distinguishing their ranks and occupations, and those who have made returns from those who have neglected to do so, (and where the true names of such persons cannot be procured, the common appellation of such persons shall be sufficient,) and distinguishing those labouring under any infirmity, and those claiming to be exempt, and on what account, and shall affix a true copy on the church or chapel door of such parish, &c. that all persons thinking themselves aggrieved, may then appeal, and not afterwards; and shall afterwards make a return of such list to the deputy-lieutenants of the sub-division.

to make out lists.

Copy to be affixed on church-door.

And finally to be delivered to deputy-lieutenants.

29. Persons thinking themselves aggrieved may appeal to the sub-division meetings, the determination thereof to be final.

Persons may appeal.

30. On the days and at the places appointed for the returns, the constables shall attend and verify the same upon oath, and the deputy-lieutenants, after hearing any appeals, shall direct such lists to be amended as the case shall require, and also direct the names of persons exempted to be struck out, and the names of persons that have been omitted to be inserted; and shall then return to the clerk of the general meetings certificates of the men between eighteen and forty-five liable to serve.

Lists to be verified by constable, and amended by deputy-lieutenants; and certificates of men liable, to be returned to the general meeting.

31. Inflicts a penalty of 50*l.* on persons endeavouring to prevail on constables, &c. to make false returns, and of 10*l.* on persons refusing to tell their names, or the names of lodgers.

Penalty for tampering with constable, &c.

32. Deputy-lieutenants may issue orders for the attendance of constables, &c. and if any shall neglect to appear, or any chief constable, &c. to return lists, or shall be guilty of fraud, partiality, or neglect, he shall be committed to gaol, or may be fined.

Punishment of constable for neglect, &c.

33. If any constable, &c. shall be of the people called Quakers (certified to be so by two Quakers), and neglect or refuse to perform the duties required by

Constable being a Quaker.

this Act, two justices shall appoint a fit and proper person to be deputy to such Quaker, for the purpose of carrying this Act into execution ; and every person so appointed, shall perform all his duties and offices, under the like pains, penalties, and forfeitures, as the person for whom he shall act.

Two or more places may be added together.

34. Two or more places, and lists for them, may be added together by the deputy-lieutenants ; and the constables, &c. shall act together as if they were the officers of the same parish, and shall meet in the parish first named in the order of the deputy-lieutenants ; and in case of disagreement between parish officers, the deputy-lieutenants may hear and determine the same.

Extra-parochial places.

35. All provisions of this Act shall extend to every extra-parochial place, and where there shall be any extra-parochial place wherein there are no constables, &c. or overseers of the poor, the constables or overseers of the parish to which such extra-parochial place shall have been added, may and shall act in the execution of this Act ; provided rates made for any parish and extra-parochial place jointly shall be distinctly made for the purpose of this Act, and be levied as the poor-rates.

Penalty on clerks of sub-division meetings for neglect.

36. If clerks of sub-division meetings do not transmit to the clerk of the general meetings copies of rolls, or if they make false returns, they shall forfeit 20*l*.

Penalty on clerks of general meetings.

37. Clerks to general meetings failing to transmit to the Privy Council annual returns of the number of persons between the ages of eighteen and forty-five, &c. or making false returns, shall forfeit 100*l*.

Privy Council to fix number of militia-men, &c. every 10 years.

38. The Privy Council may and shall, from time to time, at the expiration of every succeeding ten years, ascertain, settle, and fix, the number of militia-men, who shall, for the next succeeding ten years, serve for each county, riding, and place, as near as may be by the proportion that the number of men in each county, &c. shall bear to the whole number of militia-men directed to be raised, and

shall thereupon transmit the numbers to the county lieutenants, and publish the same in the London Gazette.

39. Where the number fixed shall be greater than any former quota, the general meeting shall appoint what number shall be chosen for each division; and where the number shall be less, shall dismiss the excess by ballot, proportionably, out of each division. Men thus dismissed shall remain liable to serve, and their names be entered in a list, out of which vacancies shall be filled up, by ballot, to serve for the remainder of the time for which they were engaged.

General meetings to augment or decrease numbers, according to decision of Privy Council.

Men dismissed to remain liable to serve.

40. General meetings may alter sub-divisions, and the allotment of men in each division.

General meetings may alter other meetings, &c. Meetings to appoint men to serve, &c.

41. At the second sub-division meeting, the deputy-lieutenants shall appoint the number of men to serve for each parish, &c. and shall appoint another meeting to be holden within three weeks; and shall order the constables, &c. to give notice of the number of men so appointed, and of the time and place of the next sub-division meeting; and the said deputy-lieutenants shall cause the number of men appointed to serve to be chosen by ballot out of the list returned, and shall appoint another meeting to be holden within three weeks in the same sub-division, and issue an order to the constables, &c. to give notice to every man so chosen to appear at such meeting, which notice shall be given, or left at his place of abode, at least seven days before such meeting; and such constable, &c. shall attend such meeting, and make returns upon oath of the days when such notice was served; and every person so chosen shall, upon such notice, appear at such meeting, and if found able and fit for the service, then and there take the following oath:

Constables to give notice to men chosen to appear.

"I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to his Majesty King ———; and that I will faithfully serve in the militia within Great Britain, for the defence of the same, during the term of five years, for which I am enrolled, unless I shall be sooner discharged."

Oath to be taken by men found fit to serve.

To be enrolled for five years. Substitutes may be provided.

And every such person shall be then enrolled to serve for five years : provided that if any person so chosen shall produce for his substitute a man of the same county, riding, or place, or of some adjoining parish or place, fit for service, who shall have not more than one child born in wedlock, and who shall be examined and approved, such substitute shall be enrolled to serve as a private for five years, and for such further time as the militia shall remain embodied ; such substitute to take the following oath :

Oath of substitute.

“ I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to his Majesty King ———— ; and that I will faithfully serve in the militia within Great Britain, for the defence of the same, during the time of five years, or for such further time as the militia shall remain embodied, unless I shall be sooner discharged.”

And any person for whom such substitute shall have been so enrolled, shall be exempt as if he himself had served.

Parishes may provide volunteers ;

42. The churchwardens or overseers of any parish, &c. may, with the consent of the inhabitants in vestry, or at any other meeting holden for that purpose, after three days' notice, produce any volunteer or volunteers, who, if approved, shall be sworn and enrolled to serve, as in case of substitutes ; and the deputy-lieutenants shall cause only such persons to be chosen by ballot out of the list returned for such parish, &c. as shall be then wanted to make up the whole number to serve for such parish, &c. ; and such churchwardens, &c. may give to such volunteer or volunteers any sum not exceeding 6*l.* each, and make a rate upon the parish for the payment of the same, the overplus to be applied to the poor's rate ; but persons who have served by themselves or substitutes shall not be liable to such rates.

Paying each man 6*l.* by rate upon the parish.

Persons exempt from serving in the militia.

43. No peer of the realm, nor any commissioned officer in his Majesty's forces, castles, or forts, nor on the half-pay of the navy, army, or marines, nor any non-commissioned officer or private in any of his Majesty's other forces, nor any commissioned officer serving, or who has served, four years in the

militia, nor any resident member of either of the universities, nor any clergyman, nor any licensed teacher, nor any constable or peace-officer, nor any artied clerk, apprentice, seaman, or sea-faring man, nor any person mustered, trained, or doing duty, or employed in any of his Majesty's docks or dock-yards, or in the Tower of London, Woolwich Warren, the gun-wharfs at Portsmouth, or the powder-mills, powder-magazines, or other store-houses of his Majesty, under the direction of the Board of Ordnance, nor any freemen of the Company of Watermen, nor any poor man who has more than one child in wedlock, shall be liable to serve personally, or provide a substitute; and persons who have served are not liable to serve again till their turns come by rotation, but substitutes or volunteers, if chosen by ballot, shall serve.

44. If, through neglect or mistake, the full number of men required for any sub-division shall not be duly enrolled, the deputy-lieutenants shall cause the lists to be amended, and proceed to a fresh ballot, and may administer oaths, &c.

Fresh ballot, in certain cases.

45. If any person chosen (not being a Quaker) shall refuse or neglect to appear and take the oath, or provide a substitute, he shall forfeit and pay 10*l.* and at the expiration of five years, be again liable to serve or provide a substitute; and if such penalty be not paid, or there be not sufficient effects whereon to levy the same, the name of such person shall be entered on the roll, and he shall be delivered over to some officer of the regiment, battalion, or corps, for which he was balloted, and shall be compelled to serve for such term, to be computed from the time of his being apprehended, as any other person then ballotted for would be compellable to serve, and be subject to the same punishments for absconding or deserting, as if he had appeared and been duly sworn and enrolled.

Penalty for non-appearance, &c, of persons chosen.

46. New lists shall be made out, if any are lost.

New lists, if any lost.

47. Persons chosen shall serve though they remove, provided they were residing at the place for which they are chosen when the list was prepared;

Persons removing, for what place they are to serve.

and those having more than one residence shall serve for the place where their names were first inserted in the list; and the clerk to the subdivision meeting shall, if required, grant a certificate gratis, that such person's name was inserted in such list, and specifying the time when such list was made and returned.

Parish in two
or more
counties.

48. Where any parish shall lie in two or more counties or ridings, the persons chosen are to serve in the militia of the county in which the parish church is situate.

Fraudulent
apprentice-
ships.

49. If the deputy-lieutenants shall receive information or suspect that any person described in the list as an apprentice has been fraudulently bound apprentice, in order to avoid serving in the militia, they may summon such persons as they think necessary to appear before them, to be examined on oath; and if it shall appear that such binding was fraudulent, in order to avoid serving in the militia, such person so fraudulently bound shall be obliged to serve as a militiaman for the parish, &c. for which such list shall have been returned, if there be a vacancy, and if not, then upon the first vacancy that shall happen: and the person to whom such apprentice shall have been so bound shall forfeit 10*l*.

Penalty on
apprentice.

Penalty on
master.

Mode of pro-
ceeding
against
Quakers.

50. If a Quaker be chosen to serve in the militia, and shall refuse or neglect to appear, two deputy-lieutenants may provide a substitute, and may levy the expenses by distress, &c.; and if no goods be found sufficient to levy distress, and it appear to the deputy lieutenants that such Quaker is able to pay 10*l*. then such deputy-lieutenants may commit such Quaker to the common gaol for three months, or until he shall have paid such sum as the deputy-lieutenants shall have agreed to pay to such substitute.—Quakers may make complaint to the deputy-lieutenants at their next meeting, if they think themselves oppressed, who are to hear and determine the same.

Ibid.

51. Justices may order payment of costs for levying by distress, where Quakers refuse to pay the rates for providing volunteers.

No man to be
enrolled until

52. No man shall be enrolled, either as a ballotted

man or a substitute or volunteer, until carefully examined by a surgeon, and declared neither ruptured, lame, maimed, nor afflicted with any disorder that may render him unfit to serve; and the deputy-lieutenants shall cause such examination to be carefully made, and may require the attendance of any surgeon of any regiment, battalion, or corps, of the militia of the county, &c. for which any man is to be enrolled, if any such surgeon is within a reasonable distance, or, otherwise, any competent surgeon; and an allowance not exceeding 10*s.* shall be made to the surgeon performing such examination, for every day he shall actually attend.

examined by
a surgeon.

Allowance to
surgeon.

53. Whenever it shall appear to any two or more deputy-lieutenants that any person chosen is not of the full height of five feet four inches, or is not approved upon examination by a surgeon, and is not possessed of an estate in land, &c. of the clear value of 100*l.*, and who shall make oath that he is not possessed of such estate, such deputy-lieutenants shall discharge such person, immediately amend the list for the place for which he was ballotted, and cause another to be chosen in his stead.

Persons not
5 feet 4 inches
high, or dis-
approved by
surgeon, and
not possessed
of 100*l.* may
be dis-
charged.

54. The deputy-lieutenants shall, as soon as they have enrolled the number of men required, divide them into as many classes, of the description hereinafter-mentioned, as shall be found among such men: viz. 1st class, men under thirty, with no child; 2nd, men above thirty, with no child; 3rd, men without child under fourteen; 4th, men with child or children, one only under fourteen; 5th, all men not included in the other classes; and shall make out a list of such classes, to be transmitted within three days to the clerk to the general meetings, to be by him entered in a book to be kept for that purpose.

Men enrolled
to be divided
into classes.

55. Whenever any militia-man, after having been enrolled, shall become unfit for service, the colonel or other commandant, with any two or more deputy-lieutenants, if the regiment be within the county to which it belongs, or the colonel or other commandant only, if the regiment be absent therefrom, may dis-

When becom-
ing unfit may
be dis-
charged.

charge such militia-man ; but another shall not be ballotted for in his room, until such discharge be confirmed by two or more deputy-lieutenants.

Men dying,
&c.

56. When any private militia-man shall, before the expiration of his term, die, or be appointed sergeant, corporal, or drummer, or be discharged, such vacancy shall be filled up by a fresh ballot.

Private appointed non-commissioned officer.

57. Whenever any private militia-man shall be appointed a non-commissioned officer or drummer, in the room of any non-commissioned officer or drummer reduced to the ranks, no ballot shall take place in consequence, until the non-commissioned officer or drummer so reduced shall have obtained his discharge.

Man provided in room of a sergeant.

58. Where a man is provided in the room of one appointed a sergeant, &c. the quarter sessions may order a sum to be paid out of the county rates, in aid of the poor's rates of the place.

Vacancies to be filled up by ballot.

59. Deputy-lieutenants, on certificate of death, promotion, &c. to cause vacancies to be filled up by ballot.

Provision as to servants enrolled.

61. If any servant whatever, hired by the year or otherwise, shall be enrolled, such enrolment shall not vacate or alter the engagement between such servant and his master or mistress, unless the militia shall be called out, or ordered to be so, or unless such person shall leave the service of his master or mistress, for the purpose of being trained and exercised, for the space of 21 days, and shall not return at the end of such 21 days, or as soon after as reasonably may be, allowing an abatement from his wages in proportion to the duration of his absence, to be settled by a justice of the peace, where any dispute shall arise, provided the sum in question do not exceed 20*l.* ; and in case of refusal or non-payment for 21 days after determination, such justice shall issue his warrant to levy the same by distress.

Penalty on substitutes or volunteers receiving money, but neglecting to appear, &c.

62. Every person who shall receive money to serve as substitute or volunteer, and neglect to appear, in order to be sworn, being convicted thereof before any deputy-lieutenant or justice of the peace,

shall be obliged to return the money to the person from whom he received it, and forfeit to such person any sum not exceeding 40*s.*, nor less than 20*s.*, at the discretion of the deputy-lieutenant or justice of the peace; and, in default of payment, shall be committed to gaol for 14 days.

63. Two deputy lieutenants, or a justice, may order the money agreed to be given to a substitute or volunteer, to be paid him on enrolment, where the militia is not embodied, and where it is, one half, and the other to the clerk of the sub-division, to be remitted to the paymaster, and paid to the man on joining and being approved; and if he shall not join or be approved of, the money shall be paid to the person provided in lieu of him. The payment of such money may be enforced according to the 20 Geo. 2. c. 19. an act for facilitating the recovery of servants' wages; and any clerk not duly remitting the money shall forfeit 20*l.*

Money to be paid to substitutes or volunteers, how to be enforced.

64. Enlistment of a militia-man into the standing army shall be void, and any one so offending shall be imprisoned not exceeding six months, and at the end serve in any regiment into which he shall have enlisted. Persons so enlisting militia-men are to forfeit 20*l.* Soldiers offering to serve as substitutes in the militia to forfeit 10*l.* or be imprisoned not exceeding three months.

Enlistment from militia into standing army, and vice versâ.

66. The penalties for refusing to serve or to find substitutes shall be applied in providing them; and the surplus shall become a part of the regimental stock.

Application of penalties for refusing to find substitutes.

67. The lieutenants, deputies, and justices, shall be authorized to administer oaths, in all cases, in the execution of this Act.

Power to administer oaths.

83. Sergeants, corporals, and drummers, shall be appointed in the following proportions: viz. When not on actual service, one sergeant and one corporal to every thirty men, and when on actual service, there shall be one sergeant and one corporal to every twenty men; and, when not on actual service, one drummer to every company, one drummer for each flank company of regiments or battalions of five or

Sergeants, drummers, and corporals, how to be appointed.

more companies, and when on actual service, an addition of one drummer to every company so drawn out: the daily pay to be as follows, viz. sergeant, 1s. 6d.; corporal, 1s. 2d.; drummer, 1s.; to be new clothed, when not on actual service, once in two years; and all sergeants, corporals, and drummers, shall take the following oath:

Their oath. "I, A. B., do sincerely promise and swear, that I will be true and faithful, and bear true allegiance to his Majesty King —, and that I will faithfully serve in the militia within Great Britain, for the defence of the same, until I shall be legally discharged."

Sergeant-major and drum-major. A sergeant-major and a drum-major may be appointed for every regiment, &c. of two or more companies, but no publican shall serve as a sergeant, &c. An additional corporal may be appointed where there is a surplus of fifteen men above the proportion of thirty to a sergeant and corporal.

No publican to serve as sergeant. 87. The militia shall be called out once every year, to be trained and exercised for 21 days¹.

Additional corporal. 89. During the time of exercise, the Mutiny Act, and Articles of War, shall be in force with respect to such militia, but not to extend to life or limb.

Militia to be called out yearly. 90. Notices of times and places of exercise are to be sent to the sub-division meetings, who shall issue orders for calling out the men; notices shall be affixed on the church doors, which shall be sufficient; though the constables are required to give written notices to the men to attend.

Discipline during service. 91. Clerks to sub-division meetings are to send lists of the men enrolled, and the time and place of exercise, to the commanding officers, &c.

Constables to issue notices of times of exercise, &c. 92. Pay of men called out to exercise shall commence on their joining; but to such as have been prevented joining, the commanding officer may direct an allowance to be made, on a satisfactory certificate.

Lists to be made of men enrolled.

¹ Altered to not exceeding 28 days, by 55 Geo. 3.; and by the 57 Geo. 3. his Majesty may suspend their being embodied at all.

93. Militia-men falling sick on the march, may be relieved by warrant of a justice, the expense to be reimbursed by the county treasurer. Men sick on a march.

94. Magistrates may billet the militia when called out to annual exercise, and when not embodied, may order lodgings, &c. for the non-commissioned officers and drummers. Magistrates to billet militia—and see post, 55 Geo. 3. c. 38.

95. Justices are to grant warrants for impressing carriages, horses, &c. for the militia on its march, within their respective counties, &c. if sufficient can be therein procured, or otherwise in the adjoining county, &c. which carriages, &c. shall be paid for as follows:—1*s.* per mile for any waggon with five horses, and any wain with six oxen, or four oxen and two horses; 9*d.* per mile for every cart with four horses, and so in proportion for carriages drawn by any less number of horses or oxen; and if the expenses exceed the rates, the overplus shall be repaid by the county treasurer. Carriages, &c. on the march. and expenses of.

97. Returns of the state of militia, when called out, are to be made by the colonel, &c. to the county lieutenant, &c., on penalty of 50*l.* for every offence. Returns of the state of the militia to be made.

98. The captain or commanding officer of every company called out, shall, during the time of such exercise, make out a correct and accurate return of the state of the classes of the men, under a penalty of 50*l.* for every default. Captain's returns.

99. Men not appearing at the time and place of exercise, or absenting themselves during that time, shall be deemed deserters, and if not taken till after, shall forfeit 20*l.* or be committed for six months. Men not appearing, deserters.

100. If men absent themselves, and do not return, or are not taken within three months, others shall be ballotted for; but if such men return or are taken, they shall be compelled to serve. Men absenting themselves.

101. The muskets are to be marked, and if any sell, pawn, or lose, their arms, &c. or neglect to return them in good order, they shall forfeit not exceeding 3*l.* or be committed for not exceeding three months. Muskets.

102. If any person shall knowingly and wilfully buy, exchange, conceal, or otherwise receive any Buying regimental necessaries.

things generally deemed regimental necessities, he shall forfeit for every offence ten pounds; and, in default of payment, be committed to gaol for six months, or until the fine be paid, or be publicly or privately whipped, at the discretion of the justice.

Reward for apprehending deserters.

109 Persons apprehending deserters are to be paid 20*s.* by warrant of the justice before whom convicted.

Penalty for concealing, &c.

110. Persons concealing or assisting deserters shall forfeit 5*l.*

King may order militia to be embodied.

111. His Majesty may order the militia to be embodied in cases of invasion, &c. put under the command of general officers, and led by their respective officers into any part of Great Britain; and, while so embodied, they shall be subject to the Mutiny Act and Articles of War.

Proclamation.

113. When his Majesty shall order the militia to be embodied, he shall issue a proclamation for a meeting of Parliament within 14 days.

Deputy-lieutenants to issue orders.

114. When the militia is ordered to be drawn out, the deputy-lieutenants shall issue orders accordingly, and the constables shall cause notice to be given to the men to attend.

Penalty for not marching in pursuance thereof.

116. If militia-men do not march in pursuance of order, they shall be deemed deserters, and persons harbouring them shall forfeit 100*l.*

Pay, when so ordered out.

117. Militia, when ordered to be drawn out, shall be entitled to the same pay as other infantry; and non-commissioned officers and men maimed and wounded, are entitled to the benefit of Chelsea Hospital.

Ibid.

118. Pay of the officers and men who do not join on the day appointed, unless prevented by necessity, shall commence only from the day of joining.

Ibid.

119. Pay of men enrolled after the militia is embodied shall commence from the day of joining, but an allowance may be made them at the time of enrolment to enable them to march, to be paid by the clerk of the sub-division, who shall be repaid by the receiver-general of the land-tax.

Price of vo-

122. Half the price of volunteers shall be paid

by the parish officers, on penalty of 10*l.*, to persons chosen by ballot who serve or provide a substitute, on their making oath that they are not worth 500*l.*, unless the person ballotted be not approved. Then the money to be paid to the next person chosen and approved.

lunteers in such case.

123. When a regiment is out of its county, a list of all men whose time shall be within four months of expiring, and who shall be willing to continue in the service, and for what price, shall at certain periods be transmitted by the commanding officer to the clerk of the general meetings.

Lists of men whose times is about to expire.

124. Clerk of the general meetings shall transmit to the clerks of the sub-divisions extracts of the returns, and the deputy-lieutenants may cause the men willing to continue to be enrolled as volunteers, and require the parish officers to remit their bounties to the paymaster.

Ibid.

125. 21*s.* bounty to be paid when and as often as the term of men chosen by lot shall be prolonged beyond five years, by the receiver-general for the county, to the captain of the company, for the use of the men.

Bounty for prolonged term.

128. Whenever the whole number enrolled for any county shall have been ordered out, and any make default, either by not appearing or by desertion or absence from duty, and such person shall not be taken within three months afterwards, a vacancy shall be declared, under the hand of the commanding officer, which vacancy shall be forthwith filled up by a fresh ballot.

Vacancies by desertion, or otherwise.

129. If his Majesty should order portions of the militia to be drawn out in the first instance, the apportionment of the private men necessary to constitute such proportion shall be made or decided by ballot or otherwise, in each sub-division or district, without assembling them previously, for which purpose the county lieutenant, &c. shall issue his order to the clerks of the sub-divisions, to make out lists of all persons enrolled in each, by a certain day; and a duplicate copy shall be made for the use of the deputy-

How to proceed when a proportion only is ordered out.

lieutenants, and another transmitted to the clerk of the general meetings.

Lieutenant,
or deputies, to
issue notices,
&c.

Delivery of
written no-
tices dis-
pensed with.

Meetings and
ballot.

Revisal of
lists.

Ballot, when
part only of
the militia is
ordered out.

130. The lieutenant or the deputy-lieutenants, to whom his Majesty's order shall be directed, shall also issue orders for assembling all the men of the militia within their respective sub-divisions, at such time and place, and in such proportions as to them shall appear most expedient; and the constables, &c. shall cause notice in writing to be given to the several men of the said militia, or left at their usual places of abode, to attend at the time and place ordered, and shall also cause a like notice to be affixed on the doors of the churches or chapels belonging to their respective parishes, &c. which shall be deemed a sufficient notice to every person enrolled, notwithstanding any omission in the delivery of written notices in manner herein directed.

132. County lieutenant, &c. shall appoint first sub-divisions meeting for balloting, and the time and place for assembling the men chosen, of which the deputy-lieutenant shall give notice, and shall cause the required proportion of the men to be ballotted for, and their names marked on the list which is to be called over, and the names of the persons chosen shall be returned to the county lieutenants, &c. and the time and place of their being to be embodied declared, and the persons declared to be so ballotted shall immediately and duly attend at the time and place appointed; and the men not chosen shall be discharged from further attendance.

133. The deputy-lieutenants, before they proceed to ballot, as herein-before directed, may revise and correct the names of the men, according to the alterations that may have taken place.

134. When his Majesty shall order only a part of any militia to be embodied, the deputy-lieutenants shall examine the classes, and if the number required shall equal the first or first and second or succeeding classes in their order, the men contained therein shall be chosen without ballot; but if less than the first class, the number shall be ballotted for thereout, and

if more than that and any succeeding class in order, such classes shall be first chosen, and the remainder ballotted for out of the next class to the last wholly taken; and in like manner any further proportion shall be supplied as well as vacancies.

137. Every man appearing and attending at the ballot, who shall not be chosen, shall be entitled to one shilling per diem, for the time he shall be necessarily employed from home, in going to, and continuing at, and returning from the place appointed, not to exceed three days, to be paid by the clerk, who is to be reimbursed out of any funds in the hands of the receiver-general.

Recompence
for attending
ballot.

138 Clerks may draw upon the receivers-general, by order of the deputy-lieutenants, &c. for money to pay allowances.

Allowances,
how to be
paid.

142. During the time any part of the militia shall be drawn out and continue embodied, his Majesty may direct the lieutenants, &c. to cause the militia not actually embodied, or any part thereof, to be drawn out, as herein-before directed for training and exercising the disembodied militia.

Training, &c.
of militia not
drawn out.

144. His Majesty may disembody the militia, and again embody them, from time to time, as to him shall seem necessary.

King may
disembody
and embody
as needful.

146. In all cases of actual invasion, or imminent danger thereof, and in case of rebellion, his Majesty (the occasion being first communicated to Parliament, if then sitting, or declared in council and notified by proclamation, if no Parliament be sitting) may order by proclamation, an addition to the ordinary number of men.

Addition to
number of
men may be
ordered in
cases of in-
vasion, &c.

152. This Act to extend to the militia of London, and of the Tower Hamlets, as far as is not inconsistent with the 36 and 39 Geo. 3. under which those militias are appointed.

London and
Tower Ham-
lets.

156. Churchwardens and overseers in Sussex and Kent are to make returns of men liable to serve, &c. and to have the same powers as constables in other places.

Sussex and
Kent.

157. County lieutenants, &c. to transmit certified returns of militia, and times of exercise, to the clerks

Annual re-
turns.

- of the peace annually, on or before Dec. 25. Where no such returns are received, the same shall be certified by the clerk of the peace.
- Penalty for not raising men.** 158. Where the quota of any county, &c. shall not be raised within a limited time, 10*l.* shall be paid for each man deficient, for which the justice in sessions shall make an assessment on the county, &c.
- How to be assessed.** 159. Such assessments upon counties to be made on each parish, proportionally to the number of men it is required to raise.
- Ibid.** 160. When the deficiency shall arise in any particular parish or parishes, the assessment shall be made thereon.
- How applied.** 161. Justice to transmit the amount of the sums assessed to the county treasurer, who is to give notice to the overseers of the poor, who are to pay the money out of the poor rates.
- Ibid.** 162. County treasurer to retain such money for three months, and pay thereout bounties to volunteers.
- How raised.** 163. In places where there are no county rates, the assessments shall be raised as the poor's rates are, and paid by the overseers to the treasurer of the county with which they are united.
- Where town in two counties.** 164. Where a town lies in two counties, the assessments shall be paid to the treasurer of that wherein the church stands.
- Liability of overseers.** 165. If the assessment for a place where there are no county rates be not paid to the county treasurer before June 1, yearly, it may be levied by the next quarter sessions on the overseers.
- Place paying, indemnified.** 166. When the assessment upon any place is paid to the receiver-general, it shall be indemnified for not raising its quota, and he shall, in ten days after receiving any such money, certify it to the Treasury, and pay it into the Exchequer, to be disposed of by Parliament. Treasury may allow compensation to the receiver-general of the county.
- Annual certificates.** 168. Clerks of the peace to transmit annually copies of certificates received from the county lieutenant, and where not delivered, to certify such omission to the Treasury, &c. and to certify omissions

of justices in proceeding to raise money to the solicitor of the Treasury, who shall compel them to do so.

170. Penalty for neglect of duty in clerks of the peace, 100*l.* and to be rendered incapable of holding any office of trust under the Crown ; receiver-general, or treasurer, 200*l.* ; chief constable, 50*l.* ; petty constable and every other officer, 20*l.* ; solicitor of the Treasury to prosecute.

Penalties for neglect of duty in clerks of peace, &c.

174. Non-commissioned officers, drummers, and men not liable to serve as peace-officers, &c.

Exemption from civil offices.

175. Married militia-men may set up business in any place in Great Britain, except the two universities.

Married militia men.

176. All fines, penalties, and forfeitures, exceeding 20*l.* to be recovered in any of his Majesty's courts; under 20*l.* by distress and sale of the offender's goods, and, in default of sufficient distress (unless in offences for which particular punishments are enacted), to be committed to the house of correction for any time not exceeding three months; the money arising from penalties to be made part of the public stock of the regiments, &c. of militia.

Recovery of penalties, and punishment in default.

By the regulations established for raising men for the militia service, it is required by the 52 Geo. 3. c. 38. s. 25. that special constables aiding in the execution of that Act, shall be above the age of thirty years.

52 Geo. 3. c. 38. Special constables to be at least 30 years of age.

By the succeeding section, two deputy-lieutenants, or one and a justice, may by warrant require the attendance of the constable or other officer; and if such constable, &c. fail to comply with the directions which he shall receive, or be guilty of any fraud, or gross neglect of duty, he may be committed to gaol for one month, or fined not exceeding 20*l.* nor under 2*l.*

Deputy-lieutenants to direct constables.

By sect. 28 the deputy-lieutenants may add together any two or more parishes or tithing, or any extra-parochial place to a parish, &c.; the constables of such places to act conjointly for the purposes of the Act.

Penalty on constables for neglect.

Deputy-lieutenants may add two parishes together, &c.

The chief constable of each hundred is to direct

Chief constable

bles to direct
petty constables to serve
notices.

the constables of the precincts to give notice to men ballotted to serve, to appear seven days before the date of the appointed meeting; such constables to attend the meeting, and attest the service of the notices. (s. 32.)

Billeting the
militia.

Mayors, magistrates, and constables of cities, &c. are to billet the local militia, when on annual exercise, at inns, livery stables, &c.; and when the local militia is not embodied, they are to provide convenient lodging, with fire and candle, in such houses, for the serjeants, corporals, and drummers, who are on permanent pay. (s. 100.)

Remuneration to
constables.

Constables, &c. acting in raising the money assessed for deficiency of men, to be paid for their trouble, by the clerk of the sub-division, a penny in the pound on the sum raised. (s. 186.)

43 Geo. 3. c. 50.
Reward for
apprehending
deserters.

And all constables, and other persons, apprehending deserters, and delivering them into proper custody, shall receive 20s. for each offender, *in addition to any reward under any Act for punishing mutiny or desertion.* (s. 25. 43. Geo. 3. c. 50.)

MINISTER,—See CLERGYMAN, PARSON, &c.

NEW POLICE,—See CONSTABLE.

OFFICERS OF THE CHURCH,—See PARSON, RECTOR, VICAR, &c.

OFFICERS OF THE PARISH,—See their titles respectively.

ORNAMENTS OF THE CHURCH,—See CHURCHWARDENS.

Overseers of the Poor.

Overseers of
the poor,
how they originated, &c.

“The poor of England,” says Blackstone, “till the time of Henry 8. subsisted entirely upon private benevolence, and the charity of well-disposed Christians;” for though it appears that, by the common law, they were to be sustained, “by parsons,

rectors of the church, and parishioners, so that none of them should die for default of sustenance," yet till the stat. 27 Hen. 8. c. 25. no *compulsory* method existed by which they were to be provided for. So long, however, as monasteries flourished, whence their chief support was derived, this defect was but little noticed; but on the dissolution of those establishments, the inconvenience of suffering large masses of the poor to live in indolence and beggary, dependent for relief on the voluntary contributions of their neighbours, became a crying evil throughout the kingdom. Various statutes were therefore passed during the reign of Henry 8. and his immediate successors, with the view of remedying this public grievance. By the 5 Eliz. c. 3. the parishioners of every parish were annually to choose two persons to be gatherers or collectors of alms for the poor; and by the 14 Eliz. c. 5. this appointment was ordered to be made by *justices*, who were also to nominate *overseers*. By the 39 Eliz. c. 3. the churchwardens of every parish, and four substantial householders, were to be appointed yearly in Easter week by two justices, and called *overseers of the poor*. Meantime the poor had been considered and treated as of two sorts; viz. the sick and impotent, who were *unable*, and the idle and sturdy who, though able, were *unwilling* to work; and provision was attempted to be made for both these classes, by founding three royal Hospitals for the relief of the impotent, and Bridewell for the punishment and employment of the idle. But these were by no means sufficient for the care and provision of the whole of the poor in the kingdom, and therefore, after many fruitless experiments, at length came the important enactment of 43 Eliz. c. 2. on which the whole system of poor-laws, as now in operation, is principally founded.

Confining ourselves, within as limited a space as possible, to the office, duties, powers, and liabilities of overseers, we shall proceed to consider:

I. *Who may be appointed to, and who are exempt from serving, the office of overseer; time and mode of appointment, and continuance in office.*

II. *Powers and general duties of overseers.*

III. *Their accounts, liabilities, and indemnities.*

I. *Who may be appointed to, and who are exempt from serving, the office of Overseer; time and mode of appointment, and continuance in office.*

43 Eliz. c. 2.
Churchwardens of every parish, and at least two substantial householders to be chosen by justices annually to be overseers.

By the 43 Eliz. c. 2. s. 1. it is enacted, that “the churchwardens of every parish, and four, three, or two substantial housekeepers, as shall be thought meet, having respect to the proportion and greatness of the parish, to be nominated yearly in Easter week, or within one month after Easter, under the hands and seals of two or more justices of the peace in the same county, whereof one shall be of the quorum, dwelling in or near the same parish or division, shall be called *overseers of the poor of the parish*; and they, or the greater part of them, shall take order, from time to time, by and with the consent of two or more such justices, for setting to work the children of all such whose parents shall not be thought by them fit and able to maintain their children; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary or daily trade of life to get their living by.”

As to the *period*, however, at which overseers are to be appointed, see further, p. 278.

Places for which overseers may be appointed.

With respect to the places for which overseers may be appointed, it will be observed that the passage above quoted from the 43 Eliz. applies to *parishes* only; but by the 13 and 14 Car. 2. c. 12. provision is deemed to be made for their appointment for *townships, villages, or hamlets* (*Rex v. Morris*, 2 Term Rep. 550); and parishes of inconvenient magnitude may be sub-divided, and extra-parochial *towns* and *vills* may have separate overseers (*Delting v. Stokelane*, Fort. 219); but not extra-parochial *places* or *precincts*. (*Ibid.*)

Mayors, &c. to have the

By the 8th sect. of stat. 43 Eliz. it is enacted, that the mayor, bailiffs, or other head officer of

every town and place corporate, and city, being justices of the peace, shall have the same authority by virtue of this Act, within the limits and precincts of their jurisdictions, as well out of sessions, as at their sessions, as is herein given to justices of the county, &c. ; and that every alderman of the city of London within his ward, may execute so much as is appointed and allowed by this Act to be executed by one or two justices of any county.

The persons to be appointed overseers must be *substantial* HOUSEHOLDERS of the parish or place for which they are chosen (43 Eliz.); but *personal residence* does not appear to be essential. Thus, where three partners carried on trade in London, in a dwelling-house, &c. the rent of which was paid by the firm, and one of them was selected as overseer, it was urged in court that though all the partners daily frequented the premises for the purposes of business, yet that *no one of them resided there*, the house being inhabited by a clerk only, who managed the business for them, and that consequently the defendant was not a householder within the 43 Eliz. The Lord Chief Justice, however, was of opinion that he *was*, and a verdict was found for the crown. And on a new trial being afterwards moved for, (which was refused,) Mr. Justice Bayley said, that "many houses in the metropolis were occupied by clerks or servants only ; but that was no reason why their owners should not be called on to discharge those duties which fall upon other householders." (*Rex v. Poynder*, 2 Dowl. & Ryl. 258 ; 1 Barn. & Cres. 178.)

authority of justices.

Alderman of London.

Who to be appointed overseers. Must be substantial householders ; but personal residence not necessary. Case of *Rex v. Poynder*.

It seems, moreover, that sex is no exemption ; for a *woman* may be appointed, if the exigencies of the case require it. (*Rex v. Stubbs*, 2 Term Rep. 395.) And the term *substantial*, though generally to be taken in its proper sense, is deemed to be so far relative, that two day-labourers (with some land annexed to their cottages, of whom one was a proprietor, and the other a farmer's servant) were held to be competent overseers, where no better could be found. (*Ibid.*)

Sex no exemption.

"Substantial," how far relative.

Non-residents assessed to the poor may be elected under certain circumstances.

By the 59 Geo. 3. c. 12. s. 6. persons residing within two miles of the parish church, or within one mile of the boundary of the parish, may be appointed, with their own consent, and at the request of the parish in vestry assembled, although they be non-resident in the parish, provided they are assessed to the poor thereof.

Persons resident in a parish for part of a year.

So also, it seems, that, under the discretionary power vested in the justices, the appointment of persons resident in a parish for *part* of the year may be justified in cases of necessity (2 *Term Rep.* 395; 1 *Burr.* 245); but as even such appointments are discouraged, it seems clear that non-residents, though they hold *land* in the parish, cannot be chosen.

Non-residents, holding land.

Exemptions.

Persons exempted by law from serving the office of churchwarden, are also exempt from that of overseer. (See, therefore, title CHURCHWARDEN.)

Subject to such exceptions, the justices may appoint such householders as they may think fit.

Time of appointment.

The Act of Eliz. provides, that overseers shall be nominated in Easter week, or within one month thereafter; but by a subsequent and comparatively recent statute, (54 Geo. 3. c. 91.) it is enacted, that they shall be appointed annually on the 25th of March, or within fourteen days from that date.

Who to appoint.

The justices only can legally make the nomination or appointment of overseers (3 *Term Rep.* 138). No usage will entitle the *parishioners* to elect them (*Ibid*); though the ordinary mode is for the magistrates to appoint the overseers out of a list of persons selected by the parishioners in vestry, and to take those placed at the head.

The words "two or more justices" of the 43 Eliz. must be strictly adhered to, except in corporate towns and cities, where the duty, as before shown, rests in the mayors, bailiffs, &c. being justices of the peace. (*Rex v. Butler*, 1 *Black. Rep.* 649.) And in the latter case, such appointment cannot be made by the head officer *alone*, if there are *two* corporate justices; the signature of two justices being peremptory in all cases, (*Ibid.*) as explained *post*.

How usually

To enable the justices to make a fit selection, they

annually (towards the close of each year) issue precepts to the high constables of districts, requiring them to issue warrants to the petty constables, in furtherance of which notice is given to the existing overseers to make out and forward a list of substantial householders proper to succeed them (if a list be not voluntarily forwarded without such proceedings). But though the existing overseers might thus, it should seem, make such a list as they might think desirable, and though the appointment of the persons included therein, or of others, is entirely discretionary in the justices, yet it is usual for the parish officers to convene a vestry, for the purpose of returning to the magistrates a list of persons recommended by the parishioners to serve the office; and the magistrates, as before stated, generally sanction the election of the vestry, by nominating those placed at the head of the list, unless they have some reason to pursue a different conduct. (1 *N. P. L.* 46.)

elected and appointed.

The appointment of overseers must be in writing, under the hands and seals of two justices, and executed in the presence of each other (2 *East.* 244); and within the time limited by 54 Geo. 3. c. 91. (viz. on the 25th of March, or within fourteen days after) should be served on the parties appointed (*Ibid*); otherwise they are exempted from the penalties of refusing or neglecting to undertake the office. (*Bott's Poor Laws.*)

Appointment must be in writing, &c.

The appointment must expressly state that the persons named in it are appointed "overseers of the poor;" that they are "substantial householders" within the parish, &c.; and the county, and whether for a parish or township, &c. must be also named. (*Fort.* 320; 2 *Stra.* 1261; 4 *Term Rep.* 550.)

If made on a *Sunday*, it will be invalid, as it is deemed a "judicial act," and all judicial acts done on that day are void. The appointment of overseers on the Sabbath, therefore, (notwithstanding that the stat. of Eliz. which requires the churchwardens, &c. "to meet once a month on a Sunday," first raised a doubt on the point) is liable to be impeached, unless

Cannot, in general, be made on a Sunday.

it appear that it was made on that day without any sinister purpose, and under peculiar circumstances. (*Rex v. Butler*, 1 *Black. Rep.* 649.)

Two appointments on same day.

If two valid appointments be made on the same day, the last is void, for when the appointment is once legally made, the jurisdiction of the justices ceases (1 *Bott.* 21); nor can other justices make a new appointment, even where a person who has been appointed applies, upon sufficient cause, to have another substituted for him. He must appeal to the sessions. (*Rex v. Great Marlow*, 2 *East.* 244.)

Two overseers must be appointed.

Although the words of the statute of Eliz. are four, three, or two, substantial householders, the number usually appointed is two; and two at least must be appointed for every parish. (2 *East.* 168.)

Overseer's dying, removing, or becoming insolvent.

And by 17 Geo. 2. c. 38. if an overseer die, remove out of the parish, or become insolvent, the justices (or such head officers, &c. as aforesaid) may put another in his stead, who shall continue until new overseers are appointed.

Persons aggrieved by appointment may appeal.

Persons considering themselves aggrieved by the appointment, whether the persons so appointed, or one of them, or any of the *parishioners*, may appeal to the next quarter sessions, and if it be proved on the hearing of such appeal that the justices, &c. had not legal jurisdiction, or had made an improper choice, their order of appointment may be quashed. (1 *Stra.* 301; 4 *Term Rep.* 601; 3 *Term Rep.* 38.)

Removal into King's Bench.

But the appointment cannot be removed into the Court of King's Bench before the time for appearing has expired, for in that case such removal would deprive the party of his right of appeal, (*Tomb. Overs.*) unless notice be previously given that the appeal is abandoned. (1 *Nol. P.* 58.)

Justices compellable to make appointment.

If the justices refuse or neglect to appoint overseers in due time, the Court of King's Bench, on application from the parish, will grant a mandamus to compel them; and moreover, by the 10th sect. 43 Eliz. c. 2. "if in any place there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5*l.* to the

Penalty for neglect.

poor of such place, to be levied by distress, by warrant from the sessions."

When appointed, every overseer who continues alive, solvent, and resident within the parish, shall remain in office until the expiration of the period limited for the appointment of his successors (1 *Bott.* 25); but not longer, even though no successor be actually appointed; neither does the authority even of churchwardens, as overseers, endure beyond the expiration of the overseers' term, though liable to be revived by the appointment of new overseers, if the churchwardens continue in office beyond the overseers' regular year. (1 *Nol. P. L.* 59.)

Continuance
in office.

Persons appointed overseers, and having had notice duly served on them to that effect, may be indicted if they refuse to undertake the duties of the office, having taken no steps to exonerate themselves by proof of non-liability or otherwise, or if, having taken such steps, they refuse to execute the office after the order for their appointment has been confirmed.

Persons
appointed
refusing to
act may be
indicted.

II. Powers and General Duties.

The overseers of parishes extending into several limits and jurisdictions, shall, without dividing themselves, duly execute their office within the said parishes, in all things to them belonging. (43 *Eliz.* c. 2. s. 9.) And whatever may be done by the entire body of churchwardens and overseers, may be done by a majority of them. (14 *East.* 488.)

Jurisdiction
in certain
cases.

And overseers of the poor in townships and places where there are no churchwardens, may act in every respect for the poor as churchwardens and overseers are empowered to act, subject to the like penalties, &c. (17 *Geo.* 2. c. 18. s. 15. and 59 *Geo.* 3. c. 12. s. 35.)

Overseers
where there
are no church-
wardens.

Where *guardians* of the poor are appointed under stat. 22 *Geo.* 3. c. 83. the churchwardens and overseers have only the power of making and collecting

Where there
are guardians
of the poor.

the rates, and are not to interfere in the care or management of the poor.

Where there is a select vestry.

And where a *select vestry* has been established under the 59 Geo. 3. c. 12. overseers are to give no other relief than such as shall be ordered by the select vestry.

Their general duties.

The general duties of overseers as prescribed by the stat. of Eliz. are the charge of the poor, the making of poor-rates, the removal of paupers not belonging to the parish, the administering to the wants of the poor of their own parish, and the making up their accounts, &c. For these purposes they are required by the said Act to meet at least once a month in the church, on a Sunday, after divine service in the afternoon.

Must find work for able-bodied poor, if possible.

It is held that it is the bounden duty of overseers to endeavour to find *work*, either in or out of their own parishes, for able-bodied poor persons, who are unable to obtain employment; and it is only in the event of their being unable to find work for such persons, that they are authorized in giving them *pecuniary relief*. (*Rex v. Collett*, 2 *Barn & Cres.* 324.)

As a general principle, the public are not bound to find food for those who are able, but unwilling, to work; and therefore persons who are unable, as paupers, or not at liberty, as prisoners, to find work for themselves, must accept that which is provided for them, whilst subsisting upon the public. (2 *Barn. & Cres.* 286; 3 *Dowl. & Ryl.* 510.)

How to compel accounts from their predecessors.

If any difficulty should occur to the new overseers in obtaining the account or balance from their predecessors, it should be their first duty to lay an information on oath, before the magistrates, to that effect; and the magistrates may either commit the parties to the common gaol until they do account, or give them such time as they may think reasonable for that purpose.

Must receive paupers removed by order of justices.

Churchwardens and overseers are to receive persons removed from one county, &c. to another, under an order of two justices; and on refusing so to do,

they render themselves liable to a penalty of 5*l.* to be levied by distress and sale, with power of appeal to the next general quarter sessions. (3 *Will. & Mar.* c. 11. s. 10.)

By 9 Geo. 4. c. 40. s. 36 & 37. overseers of parishes are required to carry before a magistrate *all insane persons*, whether chargeable to the parish or not; under a penalty for neglecting such duty for seven days after knowledge of the fact of insanity, of not exceeding 10*l.* nor less than 40*s.* for every offence.

To carry insane persons before justices.
9 Geo. 4. c. 40.

Overseers are also bound to attend before a magistrate concerning any complaint of disorderly houses, gambling-houses, brothels, &c. (see DISORDERLY HOUSES); to collect the fines and costs imposed by the magistrates on persons convicted of any common assault or battery, and pay over the same towards the general county rate, under penalty of not exceeding 5*l.* including costs (4 Geo. 4. c. 31. s. 27); to pay the amount of the county rate assessed on their parishes, &c. within 30 days after demand in writing, and on default the sum may be levied by distress and sale of their goods; and to make a return of the annual value of rateable property within their respective parishes, under penalty of 20*l.* (12 Geo. 2. c. 19.); to pay the amount of the police-rate out of the poor-rate, or to levy such amount if necessary (10 Geo. 4. c. 44. and see further, POLICE); to make out a list, with the churchwardens, of all men in their parishes liable to serve on juries, (6 Geo. 4. c. 50.) &c. &c.

Other duties:
Disorderly houses;

Fines for assaults;

County rate;

Police rate;

Jury lists.

The borrowing of money is no part of the duty, nor is it within the authority, of an overseer. (3 *Stark. Rep.* 65.) Thus, if on a dispute respecting a rate for the relief of the poor, pending a reference of the question, the overseer borrows money on his own notes for the relief of the poor, and makes no rate to reimburse the money, the lender may recover it against him, as for money received to his own use. (*How v. Keech*, 1 *Bott.* 381.) But where a payment has been made by a party, at the sole request of one overseer of a parish, without the knowledge of the

Overseers not authorized to borrow money.

others, and no demand is made upon the latter till they are out of office, it would then be a question for a jury, to say whether under these special circumstances, the party who paid the money ought not to be considered as having relied on the sole responsibility of that overseer at whose request the payment was made. (*Malkin v. Vickerstaff*, 3 Barn. & Ald. 89.)

With respect to the duties of overseers concerning the management and relief of the poor, see title **POOR**; as to parish *bastards* and *apprentices*, see those titles respectively; and as to their duties and authority regarding rates for the relief of the poor, see **POOR-RATES**.

III. **Their Accounts, Liabilities, and Indemnities.**

17 Geo. 2. c. 28.
Overseers' accounts, when and how to be delivered to their successors.

By 17 Geo. 2. c. 28. churchwardens and overseers shall, within 14 days after overseers shall have been appointed for the year ensuing, deliver unto their successors a just account in writing, fairly entered in a book to be kept for that purpose, and signed by them, of all sums by them received, or rated on the inhabitants, though not received, and also of all goods, chattels, stock, and materials, in their hands, or in the possession of any poor of the said parish, to be wrought or worked, and of all monies paid during their office; and finally, of all other things relative to their said office proper to be transmitted to their successors.

Must be verified before a justice.

And such account shall be verified by oath (or affirmation, in the case of Quakers), before a justice of the peace.

Balance, &c. to be delivered over.

Books to be kept, and allowed to be inspected by parishioners.

And the balance, stock, &c. shall be delivered over to their successors, and the said books carefully kept, in some public or other place in every parish, &c.; and they shall permit any person assessed, or liable to be assessed to the poor, to inspect the same at all seasonable times, upon payment of *sixpence* for such inspection; and the churchwardens and overseers, on demand of any such person, shall forthwith give

copies of such accounts, at the rate of sixpence for every three hundred words, and so in proportion for any greater or less number.

Or copies of accounts therein may be claimed.

And if any overseer shall refuse or neglect to give up such accounts on oath, or to pay and deliver over to his successors all monies and other things of the parish in his hands, as before directed, he shall be committed to gaol till he comply, or he may be indicted and fined. (5 *Mod.* 179.)

Punishment for refusal to deliver such account, &c.

A mere summary, or balance-sheet, is not a sufficient compliance with the statute; the accounts must be precise and particular, and must be verified. (3 *Dowl. & Ryl.* 299.)

A mere summary not sufficient.

If any overseer shall remove out of the parish, he is bound, before such removal, to deliver over to some other overseer, or to the churchwardens, his accounts, verified as aforesaid, together with all monies, goods, books, &c. under the same penalty as though he had served out his full term.

Overseer removing out of parish must deliver up his accounts.

And in case of the death of any overseer before the expiration of his office, his executors or administrators shall, within 40 days after his decease, pay over unto some other overseer of the parish, or to the churchwardens, out of the assets of the deceased, all monies received by him by virtue of his office, and not disbursed, *before any other of his debts be paid*; and shall also deliver over, in like manner, all other things belonging to the parish which shall come to their possession as executors, &c.

In case of death during office, his executors or administrators to deliver up parish goods, and pay over balance, in preference to all other debts.

If an overseer become bankrupt, the money collected by him for the use of the poor will not be affected by such bankruptcy; for he merely holds it as *trustee* for the parish: neither will such bankruptcy discharge him from his office. (1 *Term Rep.* 369.)

Bankruptcy of overseer will not affect parish property.

If overseers continue in office more than one year, they must settle their accounts at the close of *each* year; otherwise, as the inhabitants of a parish are a fluctuating body, the *present* inhabitants might be burthened with the expenses of their predecessors. (*Rex v. Goodcheap*, 6 *Term Rep.* 161.)

Overseers officiating more than a year, to account *each* year.

Overseers are entitled to take credit in their ac-

What disbursements

are allowed,
&c.

counts for all sums properly expended in the discharge of their duty, but not for disbursements to which a rate made by them is by law inapplicable. (2 Barn. & Ald. 522; 5 Barn. & Ald. 150.) Neither must they include sums given to poor persons not registered in the parish books, unless such sums be given on sudden and emergent occasions, under penalty of 5*l*. (9 Geo. 1. c. 7. s. 2.) And they are to be allowed their *bare expenses* only. (*Rex v. Glyde*, 2 Maul. & Sel. 323.)

50 Geo. 3. c. 49.
Overseers' accounts to be submitted to justices in sessions, who may strike out charges, &c.

The 50 Geo. 3. c. 49. after reciting the provisions of 43 Eliz. and 17 Geo. 2. respecting the accounts of overseers, enacts, that such accounts shall be submitted to two or more justices in special sessions, within the 14 days prescribed by 17 Geo. 2. who may examine into, and administer an oath to the overseers of the truth of the accounts, and *strike out charges which they deem unfounded*, or *reduce those which are exorbitant*, specifying such reductions, and the cause thereof, &c.

Penalty for neglect or non-compliance.

And by the same statute it is enacted, that if they do not deliver over to their successors, *within ten days after the signing and attesting* their accounts so delivered, any goods or other things which shall thereby appear to be remaining in their hands, two justices may commit them till they comply; or if they neglect to pay over the balance remaining in their hands, the amount thereof may be levied on the goods of the offenders under a warrant of two justices, and if not so recovered, they may be committed to the county gaol *until payment be made*.

Power of appeal.

But the overseers are empowered by sects. 2 and 3 of the Act, *after compliance*, to appeal against an order making reductions in their accounts, to the next general or quarter sessions, upon entering into a recognizance, with two sureties, in not less than double the amount in dispute, to abide the result of such appeal.

No proceedings to be moved by certiorari.

No proceedings, either of justices or of sessions, under this Act, shall be removed by certiorari (see Glossary); but the decision upon appeal shall be final, s. 5.

The Act not to extend to parish officers who, by any local act, are exempted from rendering accounts under 43 Eliz. and 17 Geo. 2; nor to the *city of London*, s. 6.

Not to extend to certain officers in London, &c.

The Court of King's Bench, on just cause being shown, will issue a mandamus to compel justices to pass overseers' accounts, where any neglect or unnecessary delay is proved. (1 *Bott.* 305.)

Mandamus to compel justices to pass accounts.

If a rate made by overseers be unpaid at the expiration of their year, their successors are to levy the arrears, and *reimburse their predecessors all sums expended for the use of the poor*, and allowed to be due to them *in their accounts* (17 Geo. 2. c. 38. s. 11); and the 41 Geo. 3. c. 23. s. 9. authorizes them to pay their predecessors, out of *any rate they may collect*, all sums advanced by them during the time there was no rate, or whilst it was suspended by appeal, and empowers the general or quarter sessions, on application being made for that purpose, to examine into the matter, and order payment to be levied by distress, if necessary.

Succeeding overseers may reimburse their predecessors for advances allowed in their accounts.

But where one overseer is money out of pocket, and one of his colleagues has a sufficient surplus in hand, the latter may be ordered to reimburse the former. (2 *Nol. Par. Law.* 457; *Skin.* 258.)

Or a colleague with funds may be compelled to do so.

Every appeal against overseers' accounts must be made to the *next* sessions after allowance thereof by the magistrates (17 Geo. 2. c. 38.); but it may be adjourned by the *court* to the following sessions, if reasonable notice have not been given.

Appeals against overseers' accounts must be to the next possible sessions.

If the sessions find a balance due from an overseer, but make no order for its payment, two justices out of sessions may enforce payment to the succeeding overseers, or a mandamus may be obtained to compel such justices to do so; for the appeal was to ascertain the amount upon which the statutes attach, and authorize the justices to compel payment of the balance. (*Rex v. Carter*, 4 *Term. Rep.* 246.)

Balance found due by sessions may be enforced by magistrates.

In addition to the *final* account with the parish, which overseers are required to make up and pass, as we have explained, at the expiration or other sooner determination of their office, other detailed

Other accounts to be kept, &c. by overseers while in office.

OVERSEERS OF THE POOR.

accounts must be kept by them, which should be balanced and passed at *different* periods during their *continuance* in office. Thus they (and the churchwardens) are bound to account to the quarter sessions for all monies received by them under 5 Geo. 1. c. 8. authorizing levies on the property of husbands or parents who leave their children chargeable to the parish; as also for what they may receive under 17 Geo. 2. c. 5. s. 20. which authorizes levies, in certain cases therein specified, on the property of lunatics. The Workhouse Act (22 Geo. 3. c. 83. s. 8.) also provides, that the accounts of overseers (and churchwardens) as far as relates to their payments under that Act, shall be examined at every *monthly meeting of guardians*, and shall be examined and passed *quarterly* by the *visitor*, having been first verified on oath before a justice; in addition to which, it is enacted by sect. 25 of the same statute, that the churchwarden or overseer who shall have the custody of the poor-rates, assessments, or accounts, shall, whenever requested, after four days' notice, produce them to the persons nominated in the agreement for uniting parishes made by the guardians under that Act, under penalty of 5*l*. In like manner, also, other disbursements of overseers are to be separately adjusted: thus, by the Militia Act, (43 Geo. 3. c. 47.) it is enacted by sect. 21, that all accounts of allowances to be reimbursed under that Act shall be made up at the end of every successive six months, or shorter period, from the first commencing payment thereof, and signed by the justices granting certificates for the reimbursement, or some other justices of the same county, &c. within one month after the respective periods to which such accounts shall be made up, and the money due shall as soon as possible be demanded of the overseers or treasurers required to make the reimbursement; and no such sum shall be demandable unless the same shall have been so certified within one month as aforesaid, and delivered to the reimbursing overseer or treasurer, within three months after such certifying thereof. And by the 18 Geo. 3. c. 19. the overseers

are directed to lay the accounts of constables, head-boroughs, and tithing-men, for reimbursement, before the parishioners every quarter, within fourteen days after the same shall have been delivered by the constable. (*Chitty's Burn's Justice*, tit. Poor.)

Besides the accounts above enumerated, which are to be passed during their office, there are others which the overseers are required to settle at its determination. The 7 James 1. c. 3. which entrusts them with the disposition of charitable donations given for the binding out of apprentices in places not corporate, requires that they shall, once every year, in Easter week, or within one month after Easter-day, make a true and perfect account before two or more justices, of all sums employed by them in binding apprentices under that Act, and of all bonds and obligations for payment of such sums, and of all monies remaining in their hands not employed; and at, or within ten days after, making the account, deliver to their successors all such obligations, bonds, and money, remaining unemployed. (*Ibid.*)

In order to protect overseers (and churchwardens) ^{Indemnities and protection.} in the exercise of their lawful authority, and against the frivolous or vexatious actions to which their office necessarily subjects them, the legislature has passed the several enactments of 43 Eliz. c. 2. s. 19; 7 Jas. 1. c. 5; 21 Jas. 1. c. 12; 17 Geo. 2. c. 38. sects. 8 and 10; and 24 Geo. 2. c. 44. sects. 6, 7, and 8, by which many advantages are given to them when thus sued, with respect to forms of pleading, costs, &c.

By the 43 Eliz. it is enacted, that if any action of ^{43 Eliz. c. 2.} trespass be brought against them for any thing done in the execution of their duty under *that Act*, they may plead the general issue, and give the special matter in evidence, and if a verdict be found for the defendants, or the plaintiffs be non-suited, they, the overseers, as defendants, shall recover *treble damages*, with *costs* of suit, which damages are to be assessed by the jury, and the court shall treble such damages, and give costs. (1 *Yelv.* 176.)

If such treble damages be not assessed at the trial,

they may be ascertained by writ of inquiry before judgment is entered up, it being entered on the *postea* (see Gloss.) that the defendant was an overseer, and that he was sued for a thing done by virtue of the 43 Eliz. c. 2. (*Bennet v. Hart*, 1 *Bott.* 360.)

7 Jac. 1. c. 5. By 7 James 1. c. 5. it is provided, that in any action against overseers (or churchwardens) or others doing any thing pertaining to *their office*, in their aid, and by their commandment, such persons may plead the general issue, and give the special matter in evidence; and if judgment be in favour of the defendants, or plaintiff suffer non-suit, the judge before whom the matter shall be tried, shall allow *double costs*.

21 Jac. 1. c. 12. By the 21 James 1. c. 12. confirming the above, all actions on the case, or for trespass, battery, or false imprisonment, brought against overseers, or persons acting under them, shall be laid in the *county where the fact was done*, and not elsewhere; and if the plaintiff shall not prove the fact to have been committed *within the county*, the defendant shall be found not guilty, and shall have all the remedies of the above statute.

The above two acts of James 1. giving double costs, do not extend to ecclesiastical matters. (1 *Bott.* 330.) They refer to *torts* (wrongs) and *acts done*, and cannot be deemed to extend to a non-suit in an action against overseers for the price of goods supplied for the use of the poor. (3 *Maul. & Sel.* 131; 3 *East*, 92.)

And to entitle an overseer to double costs under the above Act, the judge must certify that he was acting in the execution of his office; though on a special verdict, where it appears that the Act was clearly done by the defendant in virtue of his office, the master must tax double costs, though there be no certificate given by the judge. (1 *Bott.* 333, 335.)

17 Geo. 2. c. 38. The 17 Geo. 2. c. 38. sects. 8 and 10. enacts, that where any distress shall be made for money *justly due* for poor-rates, such distress shall not be deemed unlawful on account of any want of form in the appointment of overseers, or in the rate or warrant;

but the party shall recover for *special damage* only in an action on the case, if tender of sufficient amends be not made before the action is brought.

Overseers are also deemed included in the term ^{24 Geo. 2. c. 44.} "other officers," used in the 24 Geo. 2. c. 44. and therefore come under the protection of that Act, when levying poor-rates by distress, which requires a demand of the warrant to be made before an action can be brought, and which limits the time for bringing such action to six months after the act committed. See CONSTABLES.

A demand is also necessary before an action can ^{27 Geo. 2. c. 20.} be maintained against overseers for a surplus arising from a distress for poor-rates. The 27 Geo. 2. c. 20. s. 2. enacts, that the officer making the distress shall deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising by the sale, and that the overplus (if any) shall be returned, *on demand*, to the owner of the goods. A demand, therefore, is necessary to give a right of action; and it must be an express demand, or that which is equivalent to it. (2 *Barn. & Cres.* 682.) And even if an improper tender has been made, a formal demand is still necessary. (*Ibid.*)

In describing the duties of overseers, reference has already been made to such neglect of duty, or other misconduct, as would render them amenable to punishment. Their liabilities for misconduct.

By the 43 Eliz. c. 2. negligence in overseers in the ^{43 Eliz. c. 2.} execution of their duties, is punishable by a fine of 20*s.* to the use of the poor, to be levied by the "churchwardens and overseers;" the construction of which last words, is, that if the negligence be shown by a churchwarden, the penalty is to be levied by the overseers; and if by an overseer, by the churchwardens. (*Viner's Abr.* 415.) Such penalty to be levied by distress, under a warrant of two justices, or of the head officer of corporate places: and in default of distress, the offender to be committed to prison until payment.

And for neglecting to obey, or acting in contravention of, the 17 Geo. 2. c. 38, overseers (and church- ^{17 Geo. 2. c. 38.}

wardens) where no other penalty is provided, are subject to a fine, for every offence, of not exceeding 5*l.*, nor less than 20*s.*, information to be laid within two months.

33 Geo. 3. c.
55.

And by the 33 Geo. 3. c. 55. the justices at petty sessions are empowered to inflict on churchwardens, overseers, &c. for neglect of duty, or disobedience to warrants, any reasonable fine not exceeding 40*s.*

And besides the penalties thus provided by statute for particular offences, overseers may be indicted for a contempt of the laws, and fined and imprisoned. (5 *Mod.* 179.)

Liabilities to
indictment.

They are indictable for not receiving a pauper sent to them by an order of justices. (1 *Bott.* 378.)

For fraud; as charging the parish with monies never expended. (*Comb.* 287.)

For not making a rate to reimburse the constable in certain cases. (1 *Bott.* 341.)

For proceeding through all the stages of an expensive suit, without the concurrence of a vestry. (*Rez. v. Micklefield, Cald.* 507.)

For negligence in providing for the poor (16 *Via. Abr.* 415.); and if they relieve the poor without necessity it is a misdemeanour. (*Ibid*; 1 *Bott.* 371.)

For forcibly removing from the parish a woman approaching to her labour, in order to prevent the child's being born there. (1 *Bott.* 296.)

For procuring the marriage of a pregnant pauper, with the view of burthening another parish with the offspring. (*Burr.* 2106; *Cald.* 246.)

And overseers are equally liable with churchwardens if they are concerned, directly or indirectly, in any contract for supplying for profit any goods, &c. for the use of the workhouse or poor of their parish. (See the Act, quoted under tit. CHURCHWARDENS.) But no action for penalties will lie, it seems, if the goods furnished were not so supplied for profit (3 *Barn. & Cres.* 8.); though *fairness of price* is no defence. (8 *Taunt.* 239; 2 *Moore*, 186.)

See further, POOR RATES—POOR—VESTRY, &c.

Overseer (Assistant).

By the 59 Geo. 3. c. 12. s. 7. it is enacted, that it shall be lawful for the inhabitants of any parish, in vestry assembled, to nominate and elect any discreet person or persons to be *assistant overseer or overseers*, of the poor of such parish, and to determine and specify the duties to be by him or them executed and performed, and to fix *such yearly salary* for the execution of the said office as shall by such vestry be thought fit; and any two justices, by their warrant, may appoint such person or persons so nominated to be such assistant overseer or overseers, with such salary as aforesaid, which shall be paid out of the poor-rates, at the times and in the manner agreed on in vestry; and every assistant overseer so appointed may execute such of the duties of overseer as in his warrant shall be expressed, as fully as the same may be executed by any ordinary overseer of the poor; and shall continue in office until they shall resign, or their appointment shall be revoked by the inhabitants of the parish in vestry assembled; and such inhabitants may require and take security for the faithful execution of such office, by bond, with or without sureties, and in such penalties as they may think fit; and every such bond shall be made to the churchwardens and overseers of the poor, and may, on any breach of the conditions, be put in suit by the churchwardens and overseers for the time being, by direction of the vestry, or select vestry, for the benefit of the parish.

Assistant
overseers.

How to be
appointed,
&c.

The 35th sect. extends the provision as to the election of such assistant overseers, to all townships, vills, and places, having separate overseers, and maintaining their poor separately.

The election, and confirmation thereof by warrant of the justices, of assistant overseer, with a salary, under the above Act, being "an appointment in writing to an office or employment," comes within the Stamp Act, 55 Geo. 3. c. 184, and therefore requires a stamp.

Appointment
requires a
stamp.

Parish.

- Parish, what.** A parish is that circuit of ground which is committed to the charge of one parson or vicar, or other minister having cure of souls therein.—(*Camden.*)
- Boundaries of parishes.** The boundaries of a parish depend generally upon immemorial custom. They were settled long after the foundation of churches, and afterwards abridged as new churches arose. In order to preserve the memory of the boundaries, perambulations were anciently made every year, a custom still kept up in many parishes. These processions were in Popish times accompanied with great abuses, which led to a statute in the reign of Queen Elizabeth, in which, after reprehending the excesses and rioting arising out of the accustomed mode of the processions, the perambulations were still enjoined for the purpose of perpetuating a memory of the boundaries.
- Perambulation of boundaries.**
- Origin of the custom.** “The custom itself, and the willow wands which now form part of the ceremony, are well known; and it appears certain that these periodical perambulations are continued in conformity to a regulation made in the reign of Queen Elizabeth, that the people shall, once a year, with the curate and substantial men of the parish, walk about the parishes, and at their return to church make their common prayer; at which time also the minister shall inculcate this and such like sentences—‘*Cursed be he which translateth the bounds and doles of his neighbour.*’”—(*Clavis Calendaria.*)
- Bounds, if uncertain, to be ascertained by an action at law.** When, from neglect of the perambulations, or from other causes, the bounds of parishes have become uncertain, or difficult to determine, the usual and proper mode to have them settled is by an action at law. It appears to be agreed that it can only be a question for common law, though the ecclesiastical courts may in some cases proceed incidentally in such an inquiry. (*Comp.* 424; 1 *Burr.* 314.)
- May be settled by commission in certain cases.** There are cases in which, by the assent of the parties concerned, commissioners may be appointed to ascertain and settle the bounds of counties, towns, and manors, by perambulation (*Viner*); and by the

41 Geo. 3. c. 109. the commissioners appointed under the Inclosure Acts are authorized, by examination of witnesses on oath or affirmation, or other legal means, to inquire into the boundaries of certain parishes, &c.; and in case it shall appear to them that the boundaries thereof are not sufficiently distinguished, they may fix and determine the same. But notice must be given by such commissioners; the bounds must be published within a month, by a description thereof left with the parish officers; and they may be appealed against.

By the 58 Geo. 3. c. 45. the commissioners appointed to create separate parishes for the new churches, if they shall think it expedient to *divide any parish into two or more separate parishes for all ecclesiastical purposes*, are empowered, with the consent of the bishop of the diocese, under his hand and seal, to apply to the patron of the parish church for his consent, and upon his giving such assent under his hand and seal, they shall submit the matter to the King in Council, setting forth the proposed bounds, with the proportion of glebe lands, tithe, &c. and the amount of fees, &c. within each division; and his Majesty may direct such division to be made, with the proviso that it shall not take effect till after the death, resignation, or avoidance of the existing incumbent.

Power to divide parishes.

Division not to take effect during existing incumbency.

During the existing incumbency, and until so divided, the new churches in such divided parishes to remain chapels of ease, and to be served by a curate, &c. (*Ibid.* s. 18.)

Until division, new churches to be chapels of ease.

Incumbents of each division to be empowered to recover tithes assigned to them, (s. 17.)

Tithes of divided parishes.

Every parish so divided to be a rectory, vicarage, &c. according to the nature of the original parish church, (s. 19.)

Ecclesiastical title.

Commissioners are also empowered, by the 59 Geo. 3. c. 134. to consolidate extra-parochial parts of parishes, contiguous thereto, when at a distance from a church or chapel, into a separate district for ecclesiastical purposes, to be named, and have prescribed bounds, when approved by his Majesty in

Consolidated districts and chapelries may be made.

council; they may also constitute consolidated chapelries, with full privileges as to *marriages*, &c.; or by another Act they are authorized to make such parts of parishes into separate *ecclesiastical districts*, though not into separate *parishes*: in either case the consent of the bishop and patron must be first obtained. The boundaries of such districts to be enrolled in Chancery.

PARISH APPRENTICES,—See APPRENTICES.

PARISH BEADLE,—See BEADLE.

PARISH SEXTON,—See SEXTON.

Parish Clerk.

Parish clerks
originally
clergymen.

Parish clerks were originally clerks in holy orders (clergymen), whose duty it was to assist the officiating minister at the altar, and in the celebration of divine worship. (*Croke's Reports, temp. Car.*) But since the Reformation, the practice which had thereunto prevailed of choosing parish clerks from the poorer clergy has been discontinued.

Nomination
generally in
incumbent.

The parish clerk is now generally nominated by the incumbent, who is to signify such nomination to the parishioners on the Sunday following, either before or after divine service. (*2 Rolle's Abr. 424.*)

Unless, by
custom, in
the parish-
ioners.

But by *custom* in some parishes, the parish clerk is chosen by the parishioners in vestry; and where this custom prevails, the archdeacon is compellable by *mandamus* to confirm the appointment, by swearing the party into office. (*Ibid.*)

Custom su-
perior to
Canon.

And though by the 91st Canon of the Church, it is enjoined that "no parish clerk, upon any vacation, shall be chosen, within the city of London or elsewhere, but by the parson or vicar, or, where there is no parson or vicar, by the minister of the place for the time being," yet where the custom is in the parishioners, the canon will not be allowed to supersede it. The law books furnish several cases in

which the custom has been protected. (See *Hughes*, 275; *Townsend v. Thorpe*, 2 *Raym.* 1507, &c.)

By the 59 Geo. 3. c. 134. s. 29. (one of the Acts for erecting new churches and chapels, and forming new ecclesiastical districts,) the clerks of such churches and chapels are to be appointed annually by the ministers thereof. The same Act makes provision for fees and emoluments to clerks in divided districts, or for a compensation in lieu thereof, (s. 10.)

Clerks of new churches to be appointed by ministers.

Fees, &c. in divided districts.

In whichever way appointed, whether by the incumbent or the parishioners, the parish clerk is regarded by the common law as a *lay* officer, and as such, though liable to ecclesiastical censures, not *removable* by the ecclesiastical court. Some doubts which prevailed on this point seem to have been cleared up by the case of *Tarrant v. Hazby*, 1 *Burr.* 367. If unjustly deprived of office, a *mandamus* will lie to the churchwardens to restore him. (1 *Ventr.* 148.) Parish clerks are regarded as having a freehold in their office, and it is only on strong grounds that they can in any way be removed. (See *Rez v. Warren*, *Comp.* 370.)

Parish clerk a lay officer, &c.

Office a freehold.

The parish clerk is usually licensed by the ordinary before he enters upon his office (*Shaw*); and sworn to obey the minister. (*Johns.* 205.)

Licensed and sworn.

He must be at least twenty years of age when chosen, known to the minister to be of honest conversation, able to read and write, and have a competent skill in singing. (*Can.* 91.)

Qualifications.

His duty is, to make responses after the minister in the time of divine service; to give out the psalms proper for the day; to assist the officiating minister in marrying, baptizing, and burying the parishioners, and in all other religious offices and ceremonies of the church. (*Robinson's Lex Paroch.* 504.)

Duties.

The parish clerk appears to be entitled to a regular salary, payable quarterly, and to be levied on the whole parish. (*Gibs.* 214.) The amount would seem to depend entirely upon custom. He is also entitled, by custom, to certain fees with the minister, on marriages, burials, &c.

Salary and fees.

Parish clerks
in and about
London in-
corporated.

By a charter of Henry 3. the parish clerks in and about London were incorporated, and authorized to make bye-laws and ordinances for their own regulation; by the 10th Anne (for the building of fifty new churches within the bills of mortality) it is enacted, "that the parish clerks of such new-erected churches shall be members of the company or corporation of the clerks of the parish churches within the city, and suburbs, and liberties of London, Westminster, and Southwark, and the fifteen out-parishes named in the letters-patent of the said corporation; and shall make weekly and yearly accounts of the churchings and burials happening in their parishes; and shall in all respects be subject to the rules and orders of the said company." (*Shaw*, 1753; *Robinson*, 1827; *Steer*, 1830; &c.)

Parish clerk
making, or
inducing,
false entry as
to marriages.

A parish clerk making a false entry himself, or deceiving the clergyman so as to induce him to make a false entry of the publication of banns of marriage, may be indicted as a felon, and transported for life. (4 Geo. 4. c. 76.)

Settlement.
Deputies.

Serving the office for a year gains a settlement.

In the large parishes about London, many of the clerks have deputies to perform the business of their places, which are exceedingly profitable. (*Jacob*.) A deputy may be appointed without the license of the ordinary.

Parishioner.

Parishioner
defined.

Parishioner may, for all ordinary purposes, be defined as an inhabitant of, or one belonging to, any parish, lawfully settled therein.

But *parishioner* and *inhabitant* are both words of extensive signification, differing widely from each other in some cases, as well in the common acceptance of the terms, as in accordance with the nice distinctions which legal decisions have established.

Parishioner
and inhabi-
tant.

An inhabitant, which is literally one who inhabits, or resides, in a parish, includes all housekeepers, though not rated to the poor, and even, according to Mr. Steer, (*Par. Law*, p. 13.) persons who are not

housekeepers; "such, for instance," he says, "as have gained a settlement, and by that means become inhabitants—" (query, *parishioners*?) Parishioner not only includes all inhabitants in its import, but even *non-residents* who are *occupiers* of lands, &c. and pay rates. A parishioner, therefore, it is clear, is not necessarily an inhabitant; neither will an inhabitant, in all cases, be a parishioner: for a temporary residence (as for a few weeks) cannot be held to constitute a parishioner, and a *sojourner* is a more appropriate designation for such a resident than an inhabitant, and generally applied. The two words, parishioner and inhabitant, are not even yet clearly distinguished from each other in any of the law books. The broad common-sense discrimination seems to have escaped notice—viz. that the former need not be a resident at all, and the latter, in general, must be; for though an occupier may, in law, be deemed an inhabitant, by construction, for purposes of taxation, yet it is admitted that *resiant* (resident) is the proper sense in which inhabitant should be taken where a personal charge (as serving an office) is sought to be imposed. (See *King v. Adlard* on this point, 4 *Barn. & Cres.* 778.) Indeed, it must be a very forced construction, be its purpose what it may, and a most extraordinary perversion of the English language, which can possibly turn a mere *occupier* into an *inhabitant*. That he may be a *parishioner*, from holding lands in the *parish* seems rational, and reconcileable as well with justice as with the signification of the word. The precise legal import of each word requires adjustment.

Parishioners have many rights concerning the regulation of the parish, the appointment of its officers, &c. which will generally be found treated of under distinct heads in this Dictionary. They are a body politic for many purposes; as, to vote at a vestry if they pay scot and lot, raise taxes, repair highways, &c. Where the power of the general body is exercised, the judgment of the majority is binding, as in elections for parish officers, &c.

PARISH OFFICERS,—See CHURCHWARDENS, CON-
STABLES, &c.

Parish Registers.

Registers of
baptisms,
marriages,
and burials,
to be kept by
the minister.

Books to be
provided at
the expense
of parishes.

How entries
to be made,
and distin-
guished from
each other.

Books to be
paged.

The King's
printer to
supply pa-
rishes with a

By stat. 52 Geo. 3. c. 146. s. 1. it is enacted, that from and after the 31st of December, 1812, registers of public and private baptisms, and marriages¹, and burials, solemnized according to the rites of the United Church of England and Ireland, within all parishes and chapelries in England, whether subject to the ordinary, or peculiar, or other jurisdiction, shall be made and kept by the rector, vicar, curate, or officiating minister, of every parish, (or of every chapelry where the ceremonies of baptism, marriage, or burial, have been usually and may, according to law, be performed), for the time being, in books of parchment, or of good and durable paper, to be provided by his Majesty's printer, as occasion may require, at the expense of the respective parishes or chapelries; whereupon shall be printed upon each side of every leaf, the heads of information herein required to be entered in the registers, of baptism, marriages, and burials, respectively; and every such entry shall be numbered progressively from the beginning to the end of each book, the first entry to be distinguished by No. 1; and every such entry shall be divided from the entry next following by a printed line, according to the forms contained in the schedule (A. B. C.) hereto annexed; and every page of every such book shall be numbered with progressive numbers, the first page being marked with No. 1, in the middle of the upper part of each page, and every subsequent page being marked in like manner with progressive numbers, from No. 1 to the end of the book.

Sect. 2. And, for the better insuring the regularity and uniformity of such register-books, a printed copy of this Act, together with one book so pre-

¹ See MARRIAGE, in this Dictionary, as to witnesses, registering, and signing certificate.

pared as aforesaid, and adapted to the form of the register of baptisms prescribed in the schedule (A.) to this Act annexed; and also one other book so prepared as aforesaid, and adapted to the form prescribed for the register of marriages in the schedule (B.) to this Act annexed; and also one other book so prescribed for the register of burials in the schedule (C.) to this Act annexed, shall be provided and transmitted by his Majesty's printer to the officiating minister in the several parishes and chapelries in England respectively, who are hereby required to use and apply the same in and to the purposes of this Act; and such books respectively shall be proportioned to the population of the several parishes and chapelries, according to the last returns of such population made under the authority of Parliament; and other books of like form and quality shall, for the like purposes, be furnished from time to time by the churchwardens or chapelwardens of every parish or chapelry, at the expense of the said parish or chapelry, whenever they shall be required by the rector, vicar, curate, or officiating minister, to provide the same; and all such books shall be of paper, unless required to be of parchment by such churchwardens or chapelwardens respectively.

printed copy
of this Act,
and with the
register-
books ordered
herein to be
kept.

Sect. 3. Such registers to be kept in such separate books, and every such rector, &c. or officiating minister, shall, as soon as possible after the solemnization of every baptism, whether private or public, or burial respectively, record and enter, in a fair and legible handwriting, in the proper register-book, to be provided, &c. as aforesaid, the several particulars described in the schedules, and sign the same; and in no case, unless prevented by sickness, or other unavoidable impediment, later than within seven days after the ceremony shall have taken place.

Registers to
be made in
separate
books, within
seven days
after baptism
or burial.

Sect. 4. Whenever the ceremony of baptism or burial shall be performed in any other place than the parish church, or church-yard (or the chapel, or chapel-yard, of any chapelry with distinct registry,) and such ceremony shall be performed by any minis-

Certificates
of baptism,
&c. when per-
formed in any
other place
than parish
church, &c.
to be accord-

ing to schedule D.

ter, not being the rector, &c. of such parish or chapelry, such minister shall, on the same or the next day, transmit to the rector, &c. of such parish or chapelry, or his curate, a certificate of such baptism, or burial, in the form contained in the schedule (D.) and the rector, vicar, minister, or curate, of such parish or chapelry, shall thereupon enter such baptism or burial, according to such certificate, in the book kept pursuant to this Act, and shall add to such entry the following words; "According to the certificate of the Rev. _____, transmitted to me on the _____ day of _____."

Register-books to be kept by the minister in an iron chest.

Sect. 5. The several books wherein such entries shall respectively be made, and all register-books heretofore in use, shall be deemed to belong to every such parish or chapelry respectively, and shall be kept by, and remain in the power and custody of the rector, vicar, curate, or officiating minister, and shall be by him safely and securely kept in a dry, well painted iron chest, to be provided and repaired at the expense of the parish or chapelry; which chest shall be constantly kept locked, in some dry, safe, and secure place, within the usual place of residence of such officiating minister, (if resident within the parish or chapelry), or in the parish church or chapel; and the said books shall not, nor shall any of them, be taken from or out of the said chest, at any time or for any cause, except for the purpose of making such entries therein, as aforesaid, or for the inspection of persons desirous to make search therein, or to obtain copies from or out of the same, or to be produced as evidence in some court of law or equity, or to be inspected as to the state or condition thereof, or for some of the purposes of this Act; and, immediately after making such respective entries, or producing the said books respectively for the purposes aforesaid, the said books shall forthwith again be safely and securely deposited in the same chest.

And only to be taken out to make entries, &c.

Annual copies of registers to be made and

Sect. 6. At the expiration of two months after the 31st of December, 1812, and at the expiration of two months after the end of every subsequent year, fair

copies of all the entries of the several baptisms, marriages, and burials, solemnized within the year preceding, shall be made by the rector, vicar, curate, or officiating minister (or by the churchwardens, chapelwardens, clerk, or other person duly appointed for the purpose, under the direction of such rector, &c.) on parchment, in the same form as prescribed in the schedules; and the contents of such copies shall be verified and signed in the form following, by such rector, &c.

verified by
the minister.

I, A. B., rector [or as the case may be] of the parish of C. [or, "of the chapelry of D."] in the county of E. do hereby solemnly declare, that the several writings hereto annexed, purporting to be copies of the several entries contained in the several register-books of baptisms, marriages, and burials, of the parish or chapelry aforesaid, from the day of to the day of , are true copies of all the several entries of the said several register-books respectively, from the said day of to the said day of ; and that no other entry during such period is contained in any of such books respectively¹, are truly made, according to the best of my knowledge and belief. (Signed.) A. B.

Form of verification by
minister.

Which declaration shall be fairly written, without any stamp, on the said copy, immediately after the last entry therein; and the signature to such declaration shall be attested by the churchwardens or chapelwardens, or one of them.

Sect. 7. Copies of the said register books, verified and attested as aforesaid, shall, whether such parish or chapelry shall be subject to the ordinary, peculiar, or other jurisdiction, be transmitted by such churchwardens or chapelwardens, after they, or one of them, shall have signed the same, by the post, to the registrars of each diocese in England within which the church or chapel shall be situated, on or before the 1st of June in every year.

Annual copies of register-books, to be transmitted to registrars of dioceses.

Sect. 8. The registrar in every diocese in England

Registrars of dioceses to

¹ So in the Act.

report to the
bishops.

shall, on or before the 1st of July in every year, make a report to the bishop of such diocese, whether the copies of the baptisms, marriages, and burials, in the several parishes and places within such diocese, have been sent to such registrar, in the manner and within the time herein required; and, in the event of any failure of the transmission of the copies of the registers, the registrar shall state the default of the parish or chapelry especially in his report.

Churchwardens to report refusal of minister to verify copies of registers.

Sect. 9. In case the rector, vicar, or other officiating minister or curate, of any parish or chapelry, shall neglect or refuse to verify and sign such copies of such several register-books, and such declaration, as aforesaid, so that the churchwardens or chapelwardens shall not be liable to transmit the same, as required by this Act, such churchwardens or chapelwardens shall, within the time required by this Act for the transmission thereof, certify such default to the registrar of the diocese, who shall specially state the same in his report to the bishop.

Memoranda of baptisms and burials in extra-parochial places to be delivered to minister of adjoining parish.

Sect. 10. In all cases of the baptism of any child, or the burial of any person, in any extra-parochial place in England, according to the rites of the Established Church, where there is no church or chapel, it shall be lawful for the officiating minister, within one month after such baptism or burial, to deliver to the rector, vicar, or curate, of the parish immediately adjoining, as the ordinary shall direct, a memorandum of such baptism or burial, signed by the parent of the child baptized, or a memorandum of such burial, signed by the person employed about the same, together with two of the persons attending the same, as the case may respectively require; and every such memorandum respectively shall contain all such particulars as herein-before required; and every such memorandum delivered to the rector, vicar, or curate, of any such adjoining parish or chapelry, shall be entered in the register of his parish, and form a part thereof.

And to be entered in the register of such parish.

Letters, &c. containing copies of registers, to be in-

Sect. 11. The superscription upon all letters and packets containing the copies of such parish or other registers, to be transmitted by the post by the several

offices of the said registrars, shall be indorsed and signed by the churchwardens or chapelwardens, in the form contained in schedule E. ; and all such letters and packets shall be carried and conveyed by means of his Majesty's post-office to, and be delivered at the offices of, the said registrars, without postage or other charge for the same.

Sect. 12. When the copies of the said register-books of marriages, baptisms, and burials, and also the said lists of births, baptisms, marriages, and burials, shall be transmitted to the registrars, they shall cause all the said books to be safely and securely deposited, kept, and preserved from damage or destruction, and to be carefully arranged, for the purpose of being resorted to as occasion may require ; and the said registrars shall also cause alphabetical lists to be made, and kept in books suitable to the purpose, of the names of all persons and places mentioned in such books and lists ; which alphabetical lists, books, and copies of registers and books, shall be open to all public search at reasonable times, on payment of the usual fees.

Sect. 16. Nothing in this Act contained shall diminish or increase the fees heretofore payable, or of right due, to any minister for the performance of any of the before-mentioned duties, or to any minister or registrar, for giving copies of such registrations.

Sect. 17. No duplicate or copy of any register of baptism, marriage, or burial, made under the directions and purposes of this Act shall be chargeable with any stamp duty.

Sect. 18. One half of the amount of all fines or penalties to be levied in pursuance of this Act, shall go to the person who shall inform or sue for the same ; and the remainder of such fines as shall be imposed on any churchwarden or chapelwarden shall go to the poor of the parish or place for which such churchwarden or chapelwarden shall serve ; and the remainder of such fines as shall be imposed on any rector, vicar, minister, or curate, or registrar, shall be paid and applied to such charitable purpose, as shall be directed by the bishop of the diocese.

dorsed, and to go free of postage.

Registrars to keep the copies free from damage, and to make alphabetical list of names, &c. therein, for the purposes of reference.

Fees, &c. not to be altered by this Act.

Copies of registers directed by this Act not subject to stamp.

Application of fines or penalties.

Provisions of
this Act to
extend to ca-
thedral and
collegiate
churches, &c.

Sect. 20. All the provisions in this Act shall extend, so far as circumstances will permit, to cathedral and collegiate churches, and chapels of colleges or hospitals, and the burying-grounds belonging thereto; and to the ministers who shall officiate in such cathedral or collegiate churches, or chapels of colleges or hospitals, and burial-grounds respectively, and shall baptize, marry, or bury, any person or persons, although such churches, &c. may not be parochial, or the ministers officiating therein may not be, as such, parochial ministers, and there shall be no churchwarden or chapelwardens thereof; and in all such cases the books hereinbefore directed to be provided, shall be provided at the expense of the body having right to appoint the officiating minister in every such cathedral or collegiate church or chapel of a college or hospital; and copies thereof shall be transmitted to the registrar of the diocese within which such cathedral or collegiate church or chapel of a college or hospital shall be, by the officiating minister of such church, in like manner as herein directed with respect to parochial ministers, and shall be attested by two of the officers of such church, college, or hospital, as the copies of parochial registers are herein directed to be attested by churchwardens.

1 Gul. 4. c. 66.
Forging, al-
tering, utter-
ing, &c. pa-
rish registers,
or marriage
licences, fe-
lony.

The 1 Will. 4. c. 66. s. 20. enacts, That if any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any register of baptisms, marriages, or burials, kept by the rector, vicar, curate, or officiating minister of any parish, &c. in England, any *false entry* of any matter relating to any baptism, marriage, or burial; or shall *forge or alter* in any such register *any entry* of any matter relating to any baptism, marriage, or burial; or shall *utter any writing as and for a copy* of an entry in any such register, *knowing such writing to be false*, forged, or altered; or if any person shall *utter any entry* in any such register of any matter relating to any baptism, marriage, or burial, *knowing such entry to be false*, forged, or altered; or shall *wilfully destroy, deface, or injure*, or cause or permit to be

destroyed, defaced, or injured, any such register, or any part thereof; or shall *forge or alter, or shall utter, knowing the same to be forged or altered, any licence of marriage*; every such offender shall be *guilty of felony*, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any other term not less than seven years, or to be imprisoned for any term not exceeding four years, nor less than two years.

Sect. 21 of the same statute enacts, That no rector, vicar, curate, or officiating minister of any parish, district-parish, or chapelry, who shall discover any error in the form or substance of the entry in the register of any baptism, marriage, or burial respectively by him solemnized, shall be liable to any of the penalties herein-mentioned, if he shall, within one calendar month after the discovery of such error, in the presence of the parent or parents of the child baptized, or of the parties married, or in the presence of two persons who shall have attended at any burial, or in the case of the death or absence of the respective parties aforesaid, then in the presence of the churchwardens or chapelwardens, correct the entry which shall have been found erroneous, according to the truth of the case, by entry in the margin of the register wherein such erroneous entry shall have been made, without any alteration or obliteration of the original entry, and shall sign such entry in the margin, and add to such signature the day of the month and year when such correction shall be made; and such correction and signature shall be attested by the parties in whose presence the same are directed to be made as aforesaid: provided also, that in the copy of the register which shall be transmitted to the registrar of the diocese, the said rector, vicar, curate or officiating minister, shall certify the corrections so made by him as aforesaid."

Rector, &c. may correct, in the mode prescribed, errors discovered by him in register.

Sect. 22, after reciting that "copies of the registers of baptisms, marriages, and burials, such copies being signed and verified by the written declaration of the vicar, curate, or officiating minister of every parish, district-parish, or chapelry in England where

Making false entries in copies of registers transmitted to registrars, forging copies, verify-

ing false
copies, &c.
felony.

the ceremonies of baptism, marriage, and burial may lawfully be performed, are directed by law to be made and transmitted to the registrar of the diocese within which such parish, district-parish, or chapel may be situate;" enacts, "that if any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any copy of any register so directed to be transmitted as aforesaid, any false entry of any matter relating to any baptism, marriage, or burial, shall forge or alter, or shall utter, knowing the same to be forged or altered, any copy of any register so directed to be transmitted as aforesaid, or shall knowingly or willingly verify any copy of any register so directed to be transmitted as aforesaid, which copy shall be false in any part thereof, knowing the same to be false, every such offender shall be guilty of *felony*, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, nor less than one year."

SCHEDULES TO THE 52 GEO. 3. c. 146.

SCHEDULE (A).

Baptisms solemnized in the parish of St. A., in the county of B., in the year one thousand eight hundred and ———.

When Baptized.	Child's Christian Name.	Parents' Name.		Abode.	Quality, Trade, or Profession.	By whom the ceremony was performed.
		Christian.	Surname.			
18— 1st Feb. No. 1.	John Son of	William Eliza- beth		Lambeth.		
3d Mar. No. 2.	Ann, Daughter of	Henry Martha		Fulham.		

PARISH REGISTERS.

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SCHEDULE (B).

Marriages solemnized in the parish of St. A., in the county of B., in the year one thousand eight hundred and ———.

A. B. of { the } Parish, and C. D. of { the } Parish
were married in this { Church } by { Banns } with
consent of { Parents } this day of in the
year { Guardians }

By me, J. J. { Rector,
Vicar, or
Curate.

*This marriage was solemnized between us { A. B.
C. D.*

*In the presence of { E. F.
G. H.*

SCHEDULE (C).

Burials in the parish of A., in the county of B., in the year one thousand eight hundred and ———.

Name.	Abode.	When Buried.	Age.	By whom the ceremony was performed.
John Will- son No. .	Duke-st. Westmin- ster.	1813, 1st. May.	62.	

SCHEDULE (D).

*I, , do hereby certify, that I did, on
the day of , baptize, according to the
rites of the United Church of England and Ireland,
, son [or "daughter"] of and
his wife, by the name of*

To the Rector [or, as the case may be] of

*I, , do hereby certify, that on the
day of A. B., of aged ,
was buried in [stating the place of burial], and that*

PARISH HOUSES, RECOVERY OF.

the ceremony was performed according to the rites of the United Church of England and Ireland, by me,

To the Rector [or, as the case may be] of

SCHEDULE (E).

To the Registrar of the Diocese of
at

A. B. } Churchwardens [or, "*Chapelwardens*"] of
C. D. } *the Parish* [or "*Chapelry*"] of [or, such
other description as the case shall require.]

Parish Houses, RECOVERY OF.

By the 59 Geo. 3. c. 12. s. 14. it is enacted, That if any person who shall have been permitted to occupy any parish or town house, or any other tenement or dwelling belonging to or provided by or at the charge of any parish, for the habitation of the poor thereof, or who shall have unlawfully intruded himself or herself into any such house, tenement, or dwelling, or into any house, tenement, or hereditament belonging to any such parish, shall refuse or neglect to quit the same, and deliver up the possession thereof to the churchwardens and overseers of the poor of any such parish, within one month after notice and demand in writing for that purpose, signed by the churchwardens and overseers, or the major part of them, shall have been delivered to the person in possession, or in his or their absence affixed on some notorious part of the premises, it shall be lawful for any two justices of the peace, upon complaint made to them by one or more of the churchwardens and overseers of the poor of the parish in which any such house, dwelling, or tenement, shall be situate, to issue their summons to the person against whom such complaint shall be made, or in his or her absence to be affixed on the premises, seven days at least before the time appointed for hearing such complaint: and such justices are hereby empowered and

required, upon appearance of the defendant, or upon proof on oath that such summons hath been delivered or affixed as hereby directed, to proceed to hear and determine the matter of such complaint, and if they shall find and adjudge the same to be true, then by warrant under their hands and seals to cause possession of the premises in question to be delivered to the churchwardens and overseers of the poor of the parish, or some of them.

If any person to whom any land appropriated, purchased, or taken under the authority of this Act for the employment of the poor of any parish, or to whom any other lands belonging to such parish, or to the churchwardens or overseers thereof, or to either of them, shall have been let for his or her own occupation, shall refuse to quit and deliver up the possession thereof to the churchwardens and overseers of the poor of such parish, at the expiration of the term for which the same shall have been demised or let to him or her ; or if any person or persons shall unlawfully enter upon, or take or hold possession of any such land, or any other land or hereditaments belonging to such parish, or to the churchwardens and overseers, or to either of them, it shall be lawful for such churchwardens and overseers of the poor, or any of them, after such notice and demand of possession as is by this Act directed in case of parish houses, to exhibit a complaint before two justices of the peace, who are authorized to hear and determine the matter thereof, and if they shall find and adjudge the same to be true, to cause possession of such land to be delivered to the churchwardens and overseers of the poor, or some of them, in such and the like manner as is by this Act directed with regard to parish houses.

Parson.

Persona Ecclesiæ, or parson, is one that has full possession of all the rights of the parochial church. He is called parson, *persona*, because by his *person* the church, which is an invisible body, is repre-

sented; and he is in himself a body corporate, in order to protect and defend the rights of the church, (which he personates) by a perpetual succession. (1 *Inst.* 300.) It has also been said, that he is called *parson*, as he is bound, by virtue of his office, in propria personâ servire Deum (to serve God in his own person). (*Fleta*, l. 9. c. 18.) He is sometimes called the *rector*, or governor, of the church; but the appellation of *parson* is the most legal, as well as the most beneficial and honourable title that a parish priest can enjoy. (1 *Comm.* c. 11. p. 384.)

The ancient appropriating corporations, or religious houses, were wont to depute one of their own body to perform divine service, and administer the sacraments, in those parishes, of which the society thus became the parson. This officiating minister was in reality no more than a curate, deputy, or vicegerent, of the appropriator, and therefore called *vicarius*, or vicar. His stipend was at the discretion of the appropriator; who was, however, bound of common right to find somebody, *qui illi de temporalibus, episcopo de spiritualibus, debeat respondere.* (*Seld. Tit.* c. 11. 1.) But this was done in so scandalous a manner, and the parishes suffered so much from the neglect of the appropriators, that the legislature was forced to interpose; and, accordingly, it was enacted by stat. 15 Rich. 2. c. 6. that in all appropriations of churches, the diocesan bishop shall ordain (in proportion to the value of the church) a competent sum to be distributed among the poor parishioners annually; and that the vicarage shall be sufficiently endowed. It seems the parish were frequent sufferers, not only by the want of divine service, but also by withholding those alms, for which, among other purposes, the payment of tithes was originally imposed; and therefore, in this Act, a pension is directed to be distributed among the poor parochians, as well as a sufficient stipend for the vicar. But he, being liable to be removed at the pleasure of the appropriator, was not likely to insist too rigidly upon the legal sufficiency of the stipend; and therefore by stat. 4 Hen. 4. c. 12. it is ordered, that the

vicar shall be a secular person, not a member of any religious house ; that he shall be vicar perpetual, not removeable at the caprice of the monastery ; and that he shall be canonically instituted and inducted, and be sufficiently endowed, at the discretion of the ordinary ; for these three express purposes, to do divine service, to inform the people, and to keep hospitality.

From this statute we may date the origin of the present vicarages ; for, before this time, the vicar was nothing more than a temporary curate ; and when the church was appropriated to a monastery, he was generally one of their own body—that is, one of the *regular* clergy ; for the monks who lived *secundum regulas* (according to the rules) of their respective houses, in societies, were denominated regular clergy, in contradistinction to the parochial clergy, who performed their ministry in the world, in *seculo* ; and who from thence were called *secular* clergy. All tithes or dues of the church of common right belong to the rector, or to the appropriator, or impropriator, who have the same rights as the rector ; and the vicar is entitled only to that portion which is expressed in his endowment, or what his predecessors have immemorially enjoyed by prescription, which is equivalent to a grant or endowment. These endowments frequently invest the vicar with some part of the great tithes ; therefore the words *rectorial* and *vicarial* tithes have no definite signification ; but *great* and *small* tithes are technical terms, and which are, or ought to be, accurately defined and distinguished by the law. (1 *Comm.* c. 11. in n.) See also title TITHES.

The endowments, in consequence of these statutes, have usually been a portion of the glebe, or land, belonging to the parsonage, and a particular share of tithes, which the appropriators found it most troublesome to collect, and which are therefore generally called *privy* or *small* tithes, the greater, or *predial* tithes being still reserved to their own use. But one and the same rule was not observed in the endowment of all vicarages. Hence some are more liberally, and

some more scantily endowed ; and hence the tithes of many things, as wood in particular, are in some parishes rectorial, and in some vicarial, tithes. (1 *Comm.* c. 11.)

The distinction, therefore, of a parson and vicar is this : the parson has for the most part the whole right to all the ecclesiastical dues in his parish ; but a vicar has generally an appropriator over him, entitled to the best part of the profits, to whom he is in effect perpetual curate, with a standing salary. Though in some places the vicarage has been considerably augmented by a large share of the great tithes ; which augmentations were greatly assisted by stat. 29 Car. 2. c. 28. enacted in favour of poor vicars and curates ; which rendered such temporary augmentations (when made by the appropriators) perpetual.

A vicar indeed must *necessarily* have an appropriator over him, or a sinecure rector, who in some books is considered as, and called, an appropriator. Of benefices, some have never been appropriated ; consequently, in those there can be no vicar, and the incumbent is rector, and entitled to all the dues of the church. Some were appropriated to secular ecclesiastical corporations, which appropriations still exist, except perhaps some few which may have been dissolved ; others were appropriated to the houses of the regular clergy, all which appropriations, at the dissolution of monasteries, were transferred to the Crown ; and, in the hands of the King or his grantees, are now called impropriations ; but in some appropriated churches, no perpetual vicar has ever been endowed ; in that case, the officiating minister is appointed by the appropriator or impropriator, and is called a perpetual curate. (1 *Comm.* c. 11.)

The method of becoming a parson or vicar is much the same. To both there are four requisites necessary ; holy orders, presentation, institution, and induction. The method of conferring the holy orders of deacon and priest, according to the liturgy and canons, is foreign to the present purpose, any further than as they are necessary requisites to make a com-

plete parson or vicar. (See 2 *Burn. Eccl. Law*, 103.) By common law, a deacon of any age might be instituted and inducted to a parsonage or vicarage ; but it was ordained by stat. 13 Eliz. c. 12. that no person under 23 years of age, and in deacon's orders, should be presented to any benefice with cure ; and if he were not ordained priest within one year after his induction, he should be *ipso facto* deprived ; and now, by stat. 13 and 14 Car. 2. c. 4. no person is capable to be admitted to any benefice, unless he hath been first ordained a priest ; and then he is, in the language of the law, *a clerk in orders*.

Any clerk may be presented to any parsonage or vicarage ; that is, the patron, to whom the advowson of the church belongs, may offer his clerk to the bishop of the diocese to be instituted. A layman also may be presented ; but he must take priest's orders before his admission. (1 *Burn. Eccl. Law*, 103.)

But when a clerk is presented, the bishop may refuse him on many accounts, as for his faith, or morals, want of learning, &c.

If the bishop have no objection, but admits the patron's presentation, the clerk so admitted is next to be instituted by him, which is a kind of investiture of the spiritual part of the benefice ; for by institution the care of the souls of the parish is committed to the charge of the clerk.

When the ordinary is also the patron, and confers the living, the presentation and institution are one and the same act, and are called a collation to a benefice.

Induction is performed by a mandate from the bishop to the archdeacon, who usually issues out a precept to other clergymen to perform it for him. It is done by giving the clerk corporal possession of the church, as by holding the ring of the door, tolling the bell, or the like, and is a form required by law, with intent to give all the parishioners due notice, and sufficient certainty of their new minister, to whom their tithes are to be paid. This, therefore, is the investiture of the temporal part of the benefice,

as institution is of the spiritual. And when a clerk is thus presented, instituted, and inducted, into a rectory, he is then, and not before, in full and complete possession, and is called in law *persona personata*, or parson imparsonnee. (*C. Litt.* 300.)

The duties of the chief minister of a parish are both ecclesiastical and statutory. See PREACHING, MARRIAGE, BAPTISM, BURIAL, &c.

Parsonage.

Parsonage, or rectory, is a parish church endowed with a house, glebe, tithes, &c. or a certain portion of lands, tithes, and offerings, established by law for the maintenance of the minister who hath the cure of souls; and though properly a parsonage does consist of glebe land and tithes, yet it may be a rectory, though it hath no glebe but the church and churchyard; also there may be neither glebe nor tithes, but annual payments in lieu thereof. (*Pars. Counc.* 190.) The rights to the parsonage and church lands are of several natures; for the parson hath a right to the possession; the patron hath a right of presentation; and the ordinary a right of investiture, &c. But the rights of the patron and ordinary are only collateral rights; neither of them being capable of possessing or retaining the church themselves, though no charge can be laid on the church or parsonage, but by the consent and agreement of all of them. (*Hughes's Pars. Law*, 188.)

PASSING PAUPERS,—See POOR, REMOVAL OF.

PAUPERS,—See POOR.

Pews and Seats in Churches.

Seats and
pews in
churches by
general law

By the general law, and of common right, all the pews in a parish church are the common property of the parish; they are for the use *in common* of the

parishioners, who are *all* entitled to be seated orderly and conveniently, without payment, so as best to provide for the accommodation of all. (2 *Addams*, 425; 1 *Hagg. Rep.* 317; *Phill.* 323.)

the common property of parishioners.

And by the 43 Geo. 3. c. 108. s. 5. it is enacted, that in every parochial church or chapel erected after the passing thereof, ample provision shall be made for the decent and suitable accommodation of all persons soever entitled to resort thither, whose circumstances may render them unable to pay for the same. Some enactments as to *free sittings* are also contained in the several new statutes for the building of additional churches, copious extracts from which will be found under the title of CHURCH RATES, see *ante*, p. 94.

43 Geo. 3. c. 108. s. 5. Proviso for accommodation of parishioners in churches erected after passing thereof.

Enactments in recent Acts as to *free sittings*.

But notwithstanding the general right of all the parishioners to have seats, they are not entitled to *take what seats they like*. Their distribution rests with the churchwardens, as the officers of the ordinary, under whose control their authority is exercised. (*Phill.* 316. 323; 1 *Hagg.* 394.)

Churchwardens to have the distribution of seats.

Neither the minister nor the vestry have any right to interfere with the churchwardens in seating and arranging the parishioners. The parishioners have a claim to be seated according to their rank and station; but the churchwardens are not, in providing for this, to overlook the claim of *all* the parishioners to be seated, if sittings can be afforded them. Accordingly, they are bound in particular, not to accommodate the higher classes beyond their real wants, to the exclusion of their poorer neighbours, who are *equally* entitled to *accommodation* with the rest, though they are not entitled to *equal accommodation*, supposing the seats not to be all equally convenient. (*Steer's Parish Law*; *Fuller v. Lane*, 2 *Addams*, 425.)

Parishioners to be seated according to their rank and station.

Poor entitled to accommodation as well as rich, but not to equal accommodation.

Non-parishioners have no such rights; and therefore, directly the occupier of a pew ceases to be a parishioner (by quitting the parish) his right to a seat or pew in the church, whatever the nature and origin of that right, and however valid during his

Right to determine on occupier quitting the parish.

Erection of galleries.

continuance in the parish, at once ceases and determines. (*Byerley v. Windus*, 5 Barn. & Cres. 19.)

When the number of parishioners has so increased that the seats are insufficient to accommodate all who apply for them, the parish is bound, and may be compelled by ecclesiastical censures, to provide against this inconvenience; and therefore, upon an application for a faculty to erect a gallery in the parish church, the ecclesiastical court will consider the grounds of the application, notwithstanding it be alleged that the great majority of the inhabitants disapprove of it. For the court may refuse the *whole parish*, or grant the prayer of *one parishioner* against all the rest. It is usual, however, to regard the wishes of the majority. (*The Hornsey case*, 1 Hagg. Rep. 188.)

Seats cannot be sold or let.

The seats in a church cannot be *sold or let*, without a special Act of Parliament. (1 Hagg. Rep. 29.)

Parson's seat.

The parson or rector impropriate is entitled to the chief seat in the chancel. (*Noy*, 153; *Johns*. 264.)

Vicar's family.

In some places where the parson repairs the church, the vicar, by prescription, claims a right of seat for his family. (*Johns*. 242, 243.)

Occupier, on leaving parish, cannot let his pew with his house.

Where a parishioner has a pew allotted to him, he cannot, on his ceasing to be a parishioner, let the pew with his house; it reverts to the disposal of the ordinary. (1 Hagg. Rep. 34.)

Pew, &c. may belong to a house in parish, either by faculty or prescription.

A pew, seat, or priority in a seat, in the body of the church, may be appropriated and *belong to a house* in the parish, either by faculty, or by prescription, which presupposes a faculty. The right by prescription will be created, if the pew hath been repaired time out of mind by the inhabitants of the house. (2 Roll. Abr. 288; *Gibs*. 221; 1 Hagg. Rep. 39.)

But not to land.

But no one can claim a right by prescription as relating to *land*. (1 Wood's Inst. b. 1. c. 7.)

The right must attach to a *house*, in respect of the inhabitancy thereof, and length of possession *only* will not suffice. (1 Term Rep. 428.)

58 Geo. 3. c. 45.

By the 58 Geo. 3. c. 45. s. 75. before consecra-

tion of any church or chapel built under that Act, a seat or pew, sufficient to hold six persons at least, shall be set apart in the body or ground floor, near the pulpit, for the use of the minister and his family, and other seats (not among the free seats) for not less than four persons, for the minister's servants; and the pews, sittings, &c. to be marked "free seats," amounting to not less than one-fifth of the whole, are to be appropriated to the use of the poor for ever.

Seat for minister's family and servants.

Free seats for the poor.

Sect. 76. Subscribers (being parishioners) to any church or chapel so built, to have choice of pews at the rates fixed by the commissioners, in the order of their amount of subscriptions.

Choice of pews to subscribers.

Sect. 77. Pews or seats in such churches, &c. (except free seats) to be charged with the rents fixed on by the commissioners, and paid by the occupiers half-yearly, on the Monday after Christmas and Midsummer days, between 9 A.M. and 4 P.M.¹

Pew-rents, how to be paid.

Sect. 78. Churchwardens, with consent of incumbent, patron, and bishop, may *alter such rents*, and make a new list of rents, to be signed by them, and deposited with the deed of consecration.

Churchwardens, &c. may alter rents.

Sect. 79. If the rent of any seat or pew be unpaid for three months, and written notice demanding payment shall have been given to the owner or occupier, churchwardens may either take possession thereof, or let the same till the rent in arrear and all costs be paid, or sell the same by auction, and out of the proceeds pay the rent in arrear, with costs, and return the overplus to the owner; or they may recover such rent by action for use and occupation.

Proceedings by churchwardens in default of payment of pew-rent.

By the 59 Geo. 3. c. 134. s. 33. it is provided,

59 Geo. 3. c. 134.

¹ By the 59 Geo. 3. c. 134. s. 32. pew-rents of additional churches are directed to be payable in advance, that is, *one year's rent* shall be paid on *admission*, if given at Lady Day or Michaelmas, or if at any intermediate period, then the *proportion of the half-year* to Lady Day or Michaelmas, and a *half-year's rent* above that proportion; after which, half-yearly payments shall be made in advance, commencing at Lady Day or Michaelmas following the taking; and if such payment in advance be discontinued for two following half-years, every such pew or seat shall be forfeited and deemed vacant.

Commissioners for building new churches may discharge subscribers from payment of pew-rent, &c.

that the commissioners may discharge subscribers towards building any such church, &c. wholly or in part, from payment of pew-rents for a limited time or for life, in proportion to their subscriptions; and that they may allow any subscriber, if he remove from the parish, to assign the remainder of his term to any other parishioner.

3 Geo. 4. c. 72. Lessee's right in a pew, &c. to determine, if he quit the parish, or &c.

By the 3 Geo. 4. c. 72. s. 24. it is enacted, that if any lessee of a pew or seat for a longer term than one year, shall cease to be an inhabitant of the parish, &c. or shall not attend the church or chapel for one year, his lease shall determine at the end of the current year.

Vacant pews to be advertised annually for six weeks, &c.

And by the same statute it is provided, that in every case in which pew-rents shall be fixed as aforesaid, notice shall be given for six successive weeks at the end of each year, of all the pews vacant, or which shall become vacant at the commencement of the next year, by writing affixed on the doors of the church or chapel and vestry-room, and all pews not taken at the appointed rents within fourteen days after the commencement of the ensuing year, shall be let to any inhabitant of any adjoining parish in the churches of which there shall not be sufficient accommodation for the inhabitants, for any term not exceeding the end of the year, when they shall be again let in manner aforesaid.

If not let to parishioners, may be let to inhabitants of adjoining parish until end of the year.

1 & 2 Will. 4. c. 38.

Finally, by the last statute which refers to this subject, 1 and 2 Gul. 4. c. 38. which, in parishes where the population amounts to 2000, and the churches thereof do not afford sufficient accommodation for the inhabitants, or where 300 of the parishioners reside more than two miles from the church, enacts, that if any person shall declare his intention of building a church or chapel according to conditions specified in the Act, the bishop may declare the right of nomination to be in such person, or his trustees; it is provided with respect to pews, by sect. 4. "that the pews or sittings in such church or chapel shall be let by the church or chapel-wardens, or by some person appointed by the trustees, or person building or endowing the same, to act in that

Pews may be let where a person builds a church for additional accommodation of parishes under this Act.

behalf, according to a scale of pew-rents fixed by such trustees or person, and approved by the bishop, which scale, with consent of the bishop, may be altered from time to time as occasion may require." A proviso follows, similar to that contained in the 3 Geo. 4. c. 72. authorizing the letting of such pews to non-parishioners, if not taken within the period specified by that Act, as before explained.

POLICE,—See CONSTABLES.

Poor, or Paupers.

The poor, technically termed paupers, (from the Latin *pauper*, which signifies literally a poor person) are such as become a burden upon a parish, and "chargeable" upon its funds.

The poor coming under the cognizance of our Poor Laws, are classified as follows :

1. Poor by impotency and defect; namely, the aged or decrepit, fatherless or motherless, poor labouring under sickness, and such as are idiots, lunatics, lame, blind, &c. These are to be provided for by the overseers, or other authorities having the care or management of the poor.

2. Poor by casualty; such as housekeepers decayed or ruined by unavoidable misfortunes; poor persons overburthened with children; labourers incapable, or not able to procure work. These, having ability, are to be set to work; if not able to work, they are to be relieved.

3. Poor by idleness, prodigality, or debauchery, usually termed thriftless poor: as idle slothful persons, pilferers, vagabonds, strumpets, &c. These are to be sent to the house of correction, and made, by their work there, to maintain themselves, or other work is to be provided for them, that they may not perish for want.

The Poor Laws do not supersede the obligation which the ties of kindred impose upon all mankind to assist their helpless or destitute relatives. By

Paupers, what.

Poor of three classes.

Primary claim of a pauper on his relatives, and

power of
enforcing it.

the 43 Eliz. c. 2. it is enacted, that *parents*, or *grandfathers* or *grandmothers*, may be assessed by justices in their quarter sessions for the relief of their *children* or *grandchildren*; and that *children* may be assessed towards the relief of their *parents*; the party assessed being of sufficient ability, and the party to be relieved being poor, old, blind, lame, or impotent, or not able to work. The rate assessed by the justices is to be paid under penalty of 20s. a month, to be levied by distress, and applied towards the relief of the poor, or in default of sufficient distress, the party to be imprisoned till the amount be paid. (43 Eliz. c. 2. s. 7 and 11.)

The power of making such assessment on relatives is now extended to the justices in petty sessions. (59 Geo. 3. c. 12.)

The justices of the county or place in which the rich or able relation, and not that in which the poor one dwells, are the proper authorities to make this order. In the application it must be set forth, that the person to be relieved is poor, unable to work, and liable to become chargeable to the parish; and that the person whose relief is required, is of sufficient ability, and within the jurisdiction of the session.

The order *must* be made by the justices of the county in which the able relative resides; and such relative must be a resident inhabitant there, and cannot be so charged in any other county into which he may come for a temporary purpose. (*Rex v. Reeve*, 2 Bulst. 344.)

The statute extends only to *natural* relations, and not to relations in *law*, or those acquired by marriage; but in default of one blood relation, another may be compelled to relieve the pauper. Thus, in the case of grandfather, father, and child, the father being incapable of maintaining the child; the grandfather may be compelled to do so, if of sufficient ability. But a man is not obliged to maintain his son's wife, nor his wife's son, mother, or daughter. (4 East, 76; 2 Stra. 955.)

Such an order may be made as well upon the complaint of the overseers as upon that of the poor rela-

tive. (1 *Term Rep.* 316.) It should be positive, and not in the nature of a request or recommendation; and definite as to amount and time. "Until the court order to the contrary" has been deemed sufficiently definite. (19 *Vin.* 4. 24.)

The money ordered to be paid becomes due at the beginning of each week. (1 *Term Rep.* 316.)

Persons running away from their families, and leaving them chargeable to the parish, or persons able to maintain themselves and families neglecting to do so, may have their goods, or profits of lands, &c. seized by order of two justices, to be disposed of by the sessions, to reimburse the parish for such wife, &c. (5 *Geo.* 1. c. 8); and may be punished as rogues and vagabonds. (5 *Geo.* 4. c. 83.) And even if a man or woman *threaten* to run away and leave their families chargeable to the parish, an old statute provides, that such threat being proved by two witnesses before two justices on oath, such man or woman may be sent to the house of correction, unless he or she give security to the parish. (7 *James* 1. c. 4. s. 8.)

Persons running away and leaving family on the parish.

If the party absconding be a navy or army pensioner, two justices may order payment of their pension to the parish. (59 *Geo.* 3. c. 12. s. 31.)

Navy or army pensioners.

If the wives or families of seamen in the merchant service become chargeable, while the husband is absent on a voyage, two justices may make an order on the owner, steward, or agent of the vessel, to reimburse the parish for sums advanced, and may enforce payment by distress. (*Ibid.* s. 32.)

Seamen in the merchant service.

Poor, Settlement of the.

A settlement, which is the right that a person may acquire in the benefits dispensed under the Poor Laws, may be claimed by all natural born subjects of England and Wales, by Scotchmen, Irishmen, and foreigners, provided they come within the operation of any of the regulations that entitle persons to a settlement. But *married women* are, in general,

Settlement. General rules, and exceptions.

incapable of acquiring a settlement by any act of their own during coverture. And persons *attaint* cannot *whilst attaint* acquire a settlement (2 *Nolan's P. L.* 151, 152); nor *deserters*, while such, (*The King v. Norton*, 9 *East*, 206); nor *soldiers*, while quartered in any place, by hiring and service (1 *Nolan*, 340), although by renting a tenement they may. (1 *Barn. & Ald.* 270.) And by the 54 Geo. 3. c. 170. it is provided, that no person shall acquire a settlement in any district, &c. by being born of a mother actually confined in any *prison*, or *house* licensed for the reception of *pregnant women*; nor, by sect. 4, 5, 6. shall a settlement be gained by any *prisoner* on civil process, or for contempt; or by any gate-keeper or toll-house keeper of a turnpike road or navigation, or farmer of the tolls residing in a toll-house; or by persons maintained in any charitable institution.

The different modes of acquiring a settlement.

There are nine modes by which a pauper (which is the legal designation for a person who becomes chargeable to the parish) may obtain a settlement; they are as follows:—

1. By Birth.
2. By Parentage.
3. By Marriage.
4. By Residence, in certain cases.
5. By Renting a Tenement.
6. By Payment of Taxes.
7. By Serving an Office.
8. By Hiring and Service.
9. By Apprenticeship.

Settlement by birth and parentage.

1, 2. *Settlement by Birth and Parentage.*—In treating of settlements by birth, it is necessary to distinguish between illegitimate children and those born in wedlock. In general, the place of birth is the place of settlement of all illegitimate children; for a bastard having no parents in law, cannot be referred to *their* settlements as a legitimate child may be. To this general rule, however, as to all others, there are many exceptions; as where the mother is conveyed collusively into a parish where she gives birth to a bastard; where an illegitimate child is

born in the house of correction, or in gaol, &c. ; where born whilst the mother is under an illegal order of removal, or pending an appeal against an order of removal, which is afterwards reversed ; or born in transitu, while the mother is passing under an order of removal, or remaining under a suspension of such order ; or born after an order of removal is made, but before actual removal ; where the mother returns to the place from which she was removed ; where born in the streets, while the mother is in a state of vagrancy. In most, if not all other cases, the place of birth decides the settlement of illegitimate children.

The parish where born is also *primâ facie* the settlement of all legitimate children ; but only until the settlement to which the child is entitled by parentage can be determined. In like manner the place where a legitimate child is first found is its legal settlement, until the place of its birth or its derivative settlement can be ascertained.

All legitimate children are settled in the parish in which their father was last settled, wherever they may have been born ; or if the father had no settlement, or the same cannot be traced, then in the place in which their mother is settled ; until they are emancipated or gain a new and distinct settlement for themselves. The father's settlement is communicated to his legitimate child though born after his death, and the right is not lost after the father's death by the mother's gaining a new settlement by re-marriage.

But children after the age of seven years *may* become emancipated ; as where a child, on the removal of his father into another parish, was left behind and continued distinct from his father's family, maintaining himself by his own industry, he was held to be emancipated. So also where a son nineteen years of age, left his father's family, and went into another parish, where he married and had children. So also where a son, after he was of age married, and lived with his wife and family distinct from his father's family, though in the same parish,

he was held to be emancipated. But in general a child cannot be emancipated either by living apart in a distinct habitation or by marriage, unless by so doing he gain a settlement in his own right.

Settlement
by marriage.

3. *Settlement by Marriage.*—This species of settlement is conferred rather by construction of law than by any statute. It is held, therefore, that the moment a legal marriage takes place, the settlement of the husband is, by the fact of marriage, transferred to the wife. But the marriage must be a legal one, without fraud; and with all the legal forms; though it should seem that a marriage in Scotland is a legal marriage for the purpose of gaining a settlement. So also is a marriage procured by the fraud of a third person; and a cohabitation as man and wife for thirty years is deemed presumptive proof of marriage; and in general, evidence of cohabitation, reputation, and other circumstantial proof, is deemed sufficient testimony of the fact of marriage.

The husband's settlement is communicated to the wife and retained after the husband's death until she gains a new one, even though she never lived with him at the place where he was settled; yet her own settlement is not necessarily extinguished, but rather suspended during coverture. If the husband have no settlement, the wife may claim her own even during coverture; so also, if the husband's settlement cannot be discovered. (1 *Nolan*, 258, &c.)

A widow not having acquired a settlement after the death of her husband, must be sent to the last legal settlement of her husband. (*Rex v. Pince-orton*, and other authorities.)

A married woman may be removed to her maiden settlement if her husband has run away, and the place of his last legal settlement is not known. (*Rex v. Westerham*, and numerous authorities.)

To establish marriage it is not necessary to prove the publication of banns, nor to produce a copy of the parish register; it is sufficient if one credible witness, who was present at the ceremony, prove the fact of marriage, and the identity of the parties.

(*Settlement Cases*, 506. by *Burrows*, 1 *Blackstone's Rep.* &c.)

4. *Settlement by Residence*.—To prevent improper persons from gaining a settlement by residence, it was enacted by stat. 13 & 14. Car. 2. cap. 12. s. 1. "that it shall be lawful, upon complaint made by the churchwardens and overseers of the poor of any parish, to any justice of the peace, *within forty days* after any poor person shall come to settle in any tenement under the yearly value of 10*l.* for any two justices of the peace of the division where any person likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person to the parish where he or she was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least—unless he or she give sufficient security for the discharge of the said parish to be allowed by the said justices." (*Law Dictionary*, edited by *Tomlins*; title, *Poor*.)

Settlement
by residence.

By stat. 1 Jac. 2. cap. 17. s. 3. "the forty days' continuance," intended by the above statute to make a settlement, was to be accounted from the time of the pauper's delivery of notice, in writing, of his or her abode, and the number of his or her family, to one of the churchwardens or overseers of the poor. (*Ibid.*)

By stat. 3 and 4 Will. & Mary, cap. 11. the forty days were to be accounted from the publication of the notice, in writing; which the churchwardens or overseers were required to cause to be read publicly after divine service in the church or chapel of the parish, &c. which notice was to be registered; and a neglect of reading or of registering incurred a forfeit of 40*s.*

By the 4th section of the same statute, no soldier, seaman, shipwright, &c. can gain a settlement in any parish by such notice, &c. unless after dismissal from the service.

And by sections, 6, 7, and 8, if any person execute an annual office, or, being properly rated, pay the public taxes, or be lawfully hired as a servant, and

serve for a year, or be bound apprentice in any parish, they shall respectively gain settlements thereby, though no such notice be delivered or published.

It is apparent from the above provisions (says Mr. Tomlins,) that the legislature was anxious to prevent a settlement being gained by *constructive* notices; it was therefore decided, by various determinations of the courts, that nothing could be equivalent to notice, except those acts for which the statutes provide. And now by stat. 35 Geo. 3. cap. 101. s. 3. it is expressly enacted, "*that no person shall in future gain a settlement in any parish, &c. into which they shall come, by delivery and publication of any notice in writing.*" (*Ibid.*)

If a person have an estate of his own, and reside thereon forty days, however small the value may be, if it be acquired by act of law, or through a third person, it will constitute a legal settlement; though, if a man acquire such an estate by his own act (as by purchase) then, unless the consideration advanced be 30*l.*, it is no settlement for any longer time than the person shall reside thereon. (9 Geo. 1. cap. 7. s. 5.)

The statute above quoted was intended to prevent parishes from being incumbered by the occupants of small estates under fraudulent or collusive conveyances; it has been held, therefore, that the statute does not extend to devises or gifts, or other modes of acquisition, but is confined to *purchases* for a consideration of thirty pounds. (2 *Nolan's Poor Laws.*) But the mere purchase will not confer a settlement; there must be also a residence of forty days in the parish. (*Burrows' Settlement Cases*, 307.) Which forty days need not be consecutive, nor is it imperative that the residence be on the property purchased, if it be within the parish.—(2 *Sess. Ca.* 180; 1 *East Rep.* 254.)

Settlement
by renting a
tenement.

5. *Settlement by Renting a Tenement.*—By the construction of stat. 13 & 14. Car. 2. cap. 12. it is implied, that whoever shall rent a tenement *above* the yearly value of 10*l.*, for forty days, in the parish

in which he shall come to inhabit, shall thereby gain a settlement; because persons coming to settle in a tenement *under 10l.* a year are removeable by that statute, to the parish of their legal settlement.

By the 9 & 10 Will. 3. cap. 11. it is enacted that persons coming into a parish *with certificates*¹, can only gain a settlement by taking a *lease* of a tenement of the yearly value of 10*l.*, or by executing some annual parish office.

By the 59 Geo. 3. c. 50. (passed July 2, 1819,) no person can acquire a settlement in England by renting a tenement and dwelling therein for forty days, unless the tenement consist of a house or building, being a distinct and separate dwelling-house or building, or of land, or of both, *bonâ fide* hired at ten pounds a year at the least for one whole year, nor unless such house shall be held, and land occupied, and the rent actually paid for one whole year at the least by the person hiring the same, nor unless the whole of such land shall be situate within the same parish as the house wherein the party shall dwell. And by the 6 Geo. 4. cap. 37. s. 2. no person after the 22d June, 1825, can acquire a settlement by settling upon, renting, or paying rates for any tenement, (not his own property,) unless such tenement consist of a separate and distinct dwelling-house, or building, or of land, or of both, *bonâ fide* rated to such person at 10*l.* per annum at the least, for the term of one whole year, nor unless such house, building, or land, shall be *occupied* under such yearly hiring, and the rent to the amount of 10*l.* be actually paid for one whole year at the least.

Collectors of turnpike tolls, gate-keepers, their apprentices, &c. cannot gain this species of settlement. (54 Geo. 3. c. 170; 3 Geo. 4. c. 126.)

Prisoners on civil process, or for contempt, cannot gain such settlement by reason of their forced residence. (54 Geo. 3. c. 170.)

Less than forty days' residence upon a tenement

¹ Certificated persons are such as come into a parish with a *certificate* from the minister, and a churchwarden, or overseer, of their own parish, that they have a dwelling, but have left their family to seek work, or otherwise.

of 10*l.* a year will not gain a settlement. (*Burrows' Settlement Cases*, 54. and others.)

A forcible removal within forty days will prevent such settlement being gained. (7 *Term. Rep.* 105.) Hence if a person be arrested and carried to prison in a parish different from that in which his tenement is, before he has completed a residence of forty days therein, he gains no settlement at the place of his residence, though his family remain there. (7 *Term. Rep.* 466.)

Settlement
by payment
of taxes.

6. *Settlement by Payment of Taxes.*—By stat. 3 & 4 Will. and Mary, cap. 11. s. 6. "if any person shall come into any town or parish to inhabit, and shall, for himself, and on his own account, be charged with and pay his share towards the public taxes or levies of the said town or parish, he shall be adjudged to have a legal settlement in the same."

But now by the 6 Geo. 4. cap. 57, it is expressly enacted that the tenement must be actually occupied under such yearly hiring, and that in order to confer a settlement, rent to the amount of 10*l.* must be actually paid for the period of one whole year at the least.

The acquirement, therefore, of a settlement by payment of public taxes only, is no longer possible, unless a year's rent of 10*l.* at least be also paid.

Settlement
by serving an
office.

7. *Settlement by serving an office.*—If any person who shall come to inhabit in any town or parish, shall for himself, and on his own account, execute any public annual office, or charge, in the said town or parish, during one whole year, he shall have a legal settlement in the same. Stat. 3 & 4 Will. and Mary, c. 11. s. 6. The office need not be what is generally called a parish office, for if it be an annual office, and served in the parish, it is sufficient; and therefore, it has been held, that serving the office of warden of a borough, or the office of parish clerk, though chosen by the parson, and not by the parishioners, and although he has no license from the ordinary, for the office is annual; or the office of collector of the land tax; or the office of collector of the duties on births and

burials ; or the office of tithing-man ; or the office of constable of a city, although the election is not in the parishioners ; or the office of petty constable, if sworn in at the leet, though served by deputy ; or the office of bailiff or ale-conner ; or the office of sexton, or the office of hog-ringer, being annual offices, will gain a settlement ;—but the office of deputy constable ; or the office of schoolmaster to a charity school established by private donation ; or the office of deputy tithing-man ; or the office of curate under a sequestration ; are not annual offices, and therefore the serving them will not gain a settlement.

The party also must be regularly and legally appointed to the office, or the serving it will not be sufficient ; and therefore, although an inhabitant of a parish has a tally left at his house, signifying that he is chosen borsholder or tithingman, yet if he is not presented and admitted into the court leet, he is not legally placed in the office, and cannot gain a settlement by serving it. So also where a man is chosen constable, and even sworn in, yet not being presented at the leet, it was held that he gained no settlement by serving the office ; but when a person was appointed tithing-man by the steward of the leet, or served the office for a whole year, it was held, that he thereby gained a settlement, although he was not sworn in till the half year was expired.

The office must be completely served for a year ; and therefore, if the party becomes chargeable before the year expires, this is an interruption to the service, and will prevent his gaining a settlement, although no other person is appointed in his stead, until the year expires : and so strictly has this part of the statute been construed, that when a tithing-man served two half years at different times, it was held that they could not be joined, so as to make a service for a year, although there was a custom in the parish not to serve the office longer than half a year at a time ; the very custom proved that in this parish the office of tithing-man was not an annual

office. If, however, two parishes use the same church, and the sexton live in that parish in which neither the church nor the burial part of the churchyard lies; yet by serving this office, he shall gain a settlement in that parish where he resides.

Settlement
by hiring and
service.

8. *Settlement by Hiring and Service.*—The statutes 3 & 4 Will. and Mary, c. 11. s. 6. and the 8 & 9 Will. 3. c. 30. s. 4. provide that unmarried persons, not having children, who shall be hired into any parish or town for one year, and who shall continue and abide in the same service for one year, shall acquire settlements. But by 9 & 10 Will. 3. c. 11. certificated persons cannot gain a settlement by hiring and service: nor can servants hired to certificated persons, gain a settlement by such hiring and service. (12 Ann, st. 1. c. 18. s. 2.) Nor shall any child, nurse, or servant, maintained or employed within the Foundling Hospital, gain a settlement in the parish where such hospital is situated, by virtue of being so employed or maintained. (13 Geo. 2. c. 29. s. 7.) And persons admitted into the Magdalen Hospital, as penitents or servants, are made liable to a similar disqualification by the 9 Geo. 3. c. 31. s. 8. So also are persons hired to toll-collectors. (3 Geo. 4. c. 126. s. 51.)

It is not necessary that the whole year's service under any hiring for a year, should be performed in the parish where the hiring is made; and therefore if, under the hiring for a year, the servant serves half a year in one parish, and then removes with his master, and serves the other half of the year in another parish, he gains a service where he serves the last forty days. (*Tomlins.*)

The forty days' residence need not be forty successive days; it will be sufficient if they are within the compass of a single year. (*Burrow's Settlement Cases*, 243. and various other authorities.) And where the last forty days are in a place where no settlement can be gained, the settlement shall be in the place where the last preceding forty days were served. (*Tomlins.*) But where the residence shall be in different parishes, the settlement shall be in

that parish where the servant sleeps the *last night* of the last forty days. (1 *Nolan*, 422, 3d edition, &c. &c.)

The motive for preventing married persons having children from gaining settlements by hiring and service, being to protect parishes from undue incumbrances, it has been, therefore, decided, that a widower having children who are *emancipated*, and have gained settlements for themselves, may acquire a settlement by hiring and service. (*Anthony against Cardigan, Foley*, 131.) And a child who is emancipated may be hired as a yearly servant by its father, and will in consequence gain a settlement. (1 *Nolan*, 342.)

9. *Settlement by Apprenticeship*.—By the 8th section of 3 & 4 Will. and Mary, c. 11. “if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement;” and by 31 Geo. 2. c. 11. no person, bound apprentice by any deed, writing, or contract, not indented, the same being legally stamped, shall be liable to be removed from any parish where he shall have been so bound, and have resided forty days, on account only of such deed, writing, or contract not being *indented*.

Settlement
by appren-
ticeship.

Certificated persons cannot gain a settlement by apprenticeship, 9 & 10 Will. 3. c. 11.

Apprentices to any person residing in any parish under a certificate, and who shall not have gained a legal settlement, shall not gain any settlement in such parish by such apprenticeship or binding. (12 Anne, c. 18. s. 2.) But an apprentice to a certificated man may gain a settlement by serving him in *another* parish, or even in the certifying parish, if his master purchase an estate there, or if he serve 40 days before the master is certificated—or if the master is certificated to another parish, and the apprentice served the last forty days in the parish first certified.

An apprentice, by being bound and inhabiting in the parish where his master lives, or where his servi-

tude is performed under the indenture, thereby gains a settlement, although it be to a master who has no right to take an apprentice ; and although the apprentice at the time he binds himself, is an infant ; and though the binding is for a less term than seven years, if not avoided, on this account, by the parties themselves during the time : so also, although the apprentice fee is not inserted in the indentures, pursuant to stat. 8 Anne, c. 9. s. 39 : or though the indenture, or its counterpart, is not executed by the master or the apprentice ; or although the master be an infant. But there must be a binding as an apprentice, either by indenture or by deed properly stamped ; and if the indentures are absolutely void, he cannot gain a settlement as a servant, by his servitude under them ; so also, where a contract or agreement was made to serve for so many years, it was held not to amount to a sufficient binding as an apprentice ; for a hiring as a servant, and an agreement to bind as an apprentice, are distinct and independent contracts, and never can be converted one into the other.

There must also be a residence of forty days under the indenture to give a settlement to an apprentice ; but the forty days may be at different times ; and though in the interval of these times, the apprentice gain a new settlement, yet they will connect so as to form a forty days' residence under the indenture, and give him a settlement in the parish where he lodges the last night, although the master himself has no settlement in the parish. This species of settlement arises from the binding and inhabiting, and not, as in the case of a servant, from hiring and service ; and, therefore, the apprentice gains his settlement in that place where he inhabits, and not where his service is performed : hence, an apprentice who serves his master in one parish, and boards and lodges with his father in another, although such board and lodging be paid for by the master pursuant to a covenant in the indenture, does not gain a settlement in the master's parish.

An apprentice, while the indenture subsists, is not

sui juris, and therefore cannot serve another person without his master's consent; but if the original master consent, such service is a service under the indenture, and he gains a settlement where he lives with such second master; although the hiring out by the first to the second master is by parol, or the agreement be made by the widow of the first master before administration is taken out. As to what shall be considered a consent on part of the first master, it must always depend on the particular circumstances of the case. For further particulars respecting parish apprentices, see APPRENTICES.

Poor, Relief, Maintenance, &c. of the.

The duty of relieving and managing the poor of a parish devolves in general on the overseers, assisted by the churchwardens, who are deemed overseers by virtue of their office; but, as we have already observed, where *guardians of the poor* are appointed under the 22 Geo. 3. c. 83. the churchwardens and overseers are to make and collect the rates only, and not to interfere in the care or management of the poor. And in like manner, where a *select vestry* is established in a parish, no other relief is to be given to the poor than such as is ordered by the select vestry.

By 43 Eliz. c. 2. and 13 & 14 Car. 2. c. 12. it is provided, that the churchwardens and overseers of every parish, township, and village, shall, from time to time, with the consent of two justices, (one of whom shall be of the *quorum*,) dwelling near the parish or division, take order for setting to work all such children whose parents are not able to maintain them, and also for employing all such other persons who have no ordinary or visible trade, or other means of honestly providing for themselves; and also shall raise, weekly or otherwise, by taxation on the inhabitants, a convenient stock of hemp, wool, thread, iron, and other necessary stuff to set the poor to work.

Poor to be employed by the parish.

Hemp, wool, &c. to be provided for work.

Or other relief to be afforded.

work ; and also competent sums of money for the relief of the lame, impotent, blind, old, and others, being poor and unable to work, and also for putting out poor children to be apprentices.

Meeting of churchwardens, &c

And further, that the said churchwardens and overseers shall meet once or oftener in every month, at the parish church, at the ending of divine service, on the Sunday afternoon, to consider of the relief of the poor, as occasion may require.

Poor cannot claim relief out of their own parish.

Upon this statute of Eliz. it has been determined, that the churchwardens and overseers are not bound to resort to their poor out of their own parish in order to relieve them, even though they should be too ill to be brought home, they being to be taken care of where they are till they be removeable, and not relievable by their own parish till they are carried to it. (*3 Will's Just. 679.*)

Weekly allowance to be paid at the beginning of each week.

And when any poor person is relieved under the statute, and money is ordered to be paid to him by weekly instalments, as it usually is, such money is to be paid at the *beginning* of each week, and not, as wages are, at the end of the week. (*1 Term Rep. 316.*)

Poor refusing to be employed.

And in case any poor persons refuse to be employed as the overseers, &c. shall direct, they may be committed by a justice to the common gaol till they comply.

Wastes may be built on and trades set up.

The overseers, &c. may, by leave of the lord of the manor, build on any waste in the parish, cottages and dwelling-houses for the poor ; and by 3 Car. 1. c. 4. they may, with the consent of two justices, set up any trade for the purpose of employing the poor.

Overseers, &c. may hire or build workhouses, &c.

And by 9 Geo. 1. c. 7. it is provided, that the churchwardens and overseers, or the majority of them, with the consent of the major part of the inhabitants, in vestry, or other public meeting, or the major part of as many as may be so assembled, may purchase or hire any house in the same parish, township, or place, and also contract with any person for the lodging, maintaining or employing the poor ; and

shall keep, maintain, and employ them, and take the benefit of their work and service, for the use of the poor in general.

By the 59 Geo. 3. c. 12. the churchwardens and overseers of the poor of every parish, with the consent of the inhabitants in vestry, may take into their hands any land or ground belonging to the parish, or may *purchase, hire, or take on lease*, on account of the parish, any suitable portion or portions of land, within or near the parish, not exceeding twenty acres in the whole, and employ in the cultivation of such land, on account of the parish, any such persons as by law they are directed to set to work, and to pay to such poor persons so employed as shall *not* be supported by the parish, reasonable wages for their work.

59 Geo. 3. c. 12.
Power of
overseers, &c.
to employ
poor on pa-
rish lands.

And by the 13th section of the same statute, parish officers, with the consent of the vestry, may let any portion of parish land, or of the land to be so purchased, hired, or taken, on account of the parish, to any industrious poor inhabitant of the parish, to be cultivated for his *own benefit*, at such reasonable rent, and for such term as the vestry shall fix.

Or to let such
lands to poor
inhabitants.

And by a very recent statute, the 1 & 2 Will. 4. c. 42. the churchwardens and overseers of the poor of any parish may inclose from any waste or common land or ground, lying in or near to such parish, with the consent, in writing, of the lord of the manor, and the major part, in value, of the persons having right of common thereon, signified under their hands and seals, any part or portion of such waste or common land, *not exceeding fifty acres*, and may cultivate and improve the same for the use or benefit of such parish and the poor persons within the same, or may let any part or parts of the same to any poor and industrious inhabitant or inhabitants of such parish, to be by him or them occupied and cultivated on his or their own account. And the powers and authorities hereby given to churchwardens and overseers of the poor, shall extend to may and be exercised by the guardians of the poor of any parishes or places which are or may be incorporated or united under and by

Power under
1 & 2 Will. 4.
c. 42. to cul-
tivate, &c.
waste or com-
mon lands.

virtue of the stat. 22 Geo. 3. c. 83. or under or by virtue of any local Act or Acts, and by the overseers of all townships, villages, and places, having separate overseers, and maintaining their poor separately.

1 & 2 Will. 4.
c. 59. Powers
extended to
the inclosure
of certain
Crown
lands.

By stat. 1 & 2 Will. 4. c. 59. the power given to parish officers and overseers to provide land for the employment of the poor under stat. 59 Geo. 3. c. 12. shall extend to enable them to acquire for such purposes, portions of forest or waste lands belonging to the Crown, and they may enclose from any forest or waste lands belonging to the Crown, lying in or near to such parish, with the consent, in writing, of the Lord High Treasurer, or the Commissioners of the Treasury for the time being, (to be signified by warrant,) any part or portion of any forest or waste lands, *not exceeding fifty acres*, for the purpose of cultivating and improving the same, for the use and benefit of the parish and the poor within the same.

Parish allot-
ments may be
let in por-
tions.

By stat. 1 & 2 Will. 4. c. 42. the trustees of parish allotments made for the benefit of the poor, with a view to their winter supply of fuel, and the churchwardens and overseers of the poor, in vestry assembled, may let portions of any such allotments, not exceeding one-fourth of a statute acre to any one individual, at a yearly occupation from Michaelmas to Michaelmas, (and at such rent as land of the same quality is let for in the said parish,) to such industrious cottagers, of good character, being day-labourers or journeymen, *legally settled within the said parish, and dwelling within or near its bounds*, who shall apply for the same at the parish vestry held for the purpose in the first week of September in every year. The Act proceeds to direct that the land must be duly cultivated by the tenant; that the rent must be paid to the parish officer at the end of *each year's* occupation; that if the rent shall be four weeks in arrear, or the land not duly cultivated, the tenant may be ejected at a week's notice, and the rent recovered, and possession obtained, on application of the parish officers to two magistrates; that no habitation shall be erected on any portion of the land so let; and that where the land lies at an in-

Cultivation,
&c. thereof
by the
tenant.

convenient distance from the residence of the cottages of the parish, the vestry may let it and hire other lands more favourably situated.

By the 5 Geo. 1. it is enacted, that if any person for whom relief is prayed, shall refuse to be lodged, &c. in work-houses or places, he shall not be entitled to receive any relief from the parish.

Poor refusing to be lodged in work-houses.

But this having been found in many cases a hardship on the poor, it is now by 36 Geo. 3. c. 23. provided, that the overseers, with the consent of the parishioners, or the approbation in writing of a justice, may (notwithstanding such refusal to be lodged) give relief to industrious poor at their *own homes*, if such indulgence be rendered necessary by illness or other cause.

Industrious poor may in certain cases be relieved at their homes.

By 3 Will. and Mary, c. 11. s. 11. the churchwardens and overseers shall cause to be kept a book, wherein shall be registered the names of all persons receiving contributions from the parish, with the day and year when they were first admitted to have relief, and also the occasion which reduced them to that necessity. And once in every year, in Easter week, (or oftener if need be) the churchwardens or overseers shall meet the parishioners at vestry or otherwise, where such book shall be produced and inspected, and a fresh list, if they shall see occasion, be made of persons then requiring relief; and that no other persons than those in such list contained shall be entitled to relief, without the warrant of a justice for that purpose; and when persons shall by such justices be ordered relief, their names shall then be entered in the said parish register as aforesaid.

A register to be kept of the poor relieved.

No justice shall order relief, until oath is made of the necessity thereof, and that the party had, by himself or some other person, applied to the parishioners in vestry, or other public meeting, or to *two* of the overseers, and was *refused* to be relieved, nor until such justice shall have summoned *two* of the overseers, to show cause why relief should not be given. (9 Geo. 1. c. 7. s. 11.)

Relief by justices.

By the 59 Geo. 3. c. 12. s. 5. it is enacted, that every order for relief, in parishes not having a select

vestry, shall be made by *two* or *more* justices, and that only for one month from the date; but the statute further provides, that in cases of emergency and urgent distress, *one* justice may make an order for relief for fourteen days.

By the 36 Geo. 3. c. 28. s. 2. any justice of the peace, acting in the district, &c. may, at his *just discretion*, order relief to any industrious poor person at his *home*, notwithstanding any contract shall have been made for maintaining the poor in the work-house.

But no order shall be so made for a longer time than one month, (*Ibid.* s. 3.) or, by further order of *two* justices for any further time not exceeding one month.

The above provisions, however, appear to be virtually repealed by the 55 Geo. 3. c. 137. which enacts in sect. 3. that any *justice* or *justices* of the peace, (in the cases and in manner aforesaid) may order relief to be paid to any poor person at his or her own house, during such time as they shall think proper, *not exceeding three months* from the date of the order; and that two justices may make further order for any time not exceeding *six months*; with power to them at any time to order such relief to be discontinued. But the amount so ordered to be paid, for any longer period than one month, shall not exceed for each poor person three shillings per week, or three-fourths of the average weekly expense usually paid by the parish for the maintenance of each poor person in the workhouse.

Relief to poor
debtors.

In cases where poor persons confined in any gaol, not being a county gaol, for debt, are not entitled to any allowance for their subsistence, it is enacted by the 52 Geo. 3. c. 160. that one justice may order the overseers of the parish in which the gaol is situate to pay him *6d.* per day while in gaol; and if he should belong to another parish, such justice may make an order of removal, to be suspended until his release from imprisonment, and direct the overseers of the parish to which such debtor belongs, to pay such allowance in the mean time. But if the pauper have

no legal settlement in England or Wales, such allowance is to be repaid to the overseers, out of the county rate of the county in which the gaol is situate.

Casual poor are such as by sudden calamity, accident, or otherwise, require immediate relief, and thus become a charge upon the funds of that parish in which they may happen to be at the time, although their legal settlement may be elsewhere.

The general rule of law, as well as the practice, in such cases is, first, to relieve such paupers, and then to remove or pass them to their own parish, without any more delay than is consistent with humanity. In cases of serious accident or illness, the parish in which the pauper may be at the time is bound to provide every thing necessary for his or her relief, until recovery of sufficient health will justify the removal.

Relief of casual poor.

And it seems, that even in the case of continued illness, the expenses incurred by a parish for the relief of casual poor, cannot be recovered against the parish to which the pauper legally belongs. (2 *East*, 505.)

Overseers (by the direction of two justices, or of the general or select vestry, or of the guardians, governors or directors) may advance money, weekly or otherwise, to poor persons, by way of *loan* only, to be repaid by instalments, weekly or otherwise, as two justices shall order; but in default of payment, according to such order, the defaulter may be committed, for not exceeding three calendar months, unless the same be sooner paid. (59 *Geo.* 3. c. 12. s. 29.)

Overseers may advance money to the poor by way of loan.

And by the 30th section of the same statute, if any person entitled to a pension, superannuation, or other allowance, for services in the army, navy, marines, or ordnance, apply to the parish for relief, on his assigning to the churchwardens and overseers his next quarterly or other payment, they may advance for the support of such pensioner and his family, any weekly sum not exceeding the rate of his pension, &c. to be paid out of his next quarterly payment, taking and retaining an assignment thereof (free of

Parish officers may advance weekly sums to pensioners in the army, &c. and take an assignment of their next quarter's pension.

stamp duty,) as security for such advance, in the form following:—

Form.

"I _____ do hereby assign to the churchwardens and overseers of the poor of the parish of _____, the next payment of the pension at the rate of _____ *per diem*, (or otherwise, as the case may be) granted to me as _____, and payable from _____, in order to secure to the said parish the repayment of the sum of _____, advanced to me (or of the weekly sum of _____, ordered or agreed to be advanced to me, *as the case may be*) by such churchwardens and overseers.

Signed by the above named _____,
before me, one of his Majesty's justices of
the peace for _____, this _____ }
day of _____, 18 .

And such assignment must be attested by one justice of the peace, and transmitted by the parish officers, at least one month before payment becomes due, under cover, addressed to the paymaster-general of his Majesty's forces, with the words "*Chelsea Pensioner*," or to the paymaster-general of pensions at Greenwich Hospital, with the words "*Greenwich Pensioner*," or to the paymaster of the Royal Marines, with the words "*Royal Marines Pensioner*," or to the secretary to the Board of Ordnance, with the words "*Ordnance Pensioner*," written thereon respectively. And on the parish officers receiving such pensions, they are to retain what they have advanced, and pay the balance to the pensioner.

Dispute between pensioner and the parish.

In case of dispute between the pensioner and the parish as to the amount due under the assignment, the same may be settled in a summary way by one justice of the peace. (59 Geo. 3. c. 12.)

Death of pensioner.

Such assignment to be void if the pensioner die before the day of payment. *Ibid.*

Pensioner deserting family, how to get order on his pension.

In the case of any pensioner "leaving his wife or family chargeable, or having suffered them to become chargeable," an application must be made on oath, by one or more of the churchwardens or overseers,

and two justices of the peace may then make order for the payment of his pension to the parish. *Ibid.* s. 31.

The same application is necessary, to obtain a Seamen. similar order for the wages, &c. of seamen leaving their family chargeable. *Ibid.*

In case any person serving or enrolling as a non-commissioned officer or drummer, or as a ballotted man or substitute, hired man, or volunteer, who shall, when embodied and called out *into actual service*, leave a family unable to support themselves, the overseers of the poor of the parish where such family shall dwell, shall, by order of one justice, pay to such family a weekly allowance. (43 Geo. 3. c. 47.)

Relief to the wives and families of militia-men.

The weekly allowance according to this order must be according to the ordinary price of labour of husbandry, within the county where the family dwells, by the following estimate:—*viz.* any sum *not exceeding the price of one day's labour, nor less than 1s. for every child born in wedlock, and under ten years of age*, and for the wife of such militia-man, (whether she have children or not) any sum *not exceeding the price of one day's labour, nor less than 1s.*, to be paid out of the poor's rate; and justices at a quarter sessions for the county may, from time to time, regulate the rate of allowance to be paid under this Act, which regulating shall be binding until altered: but by 51 Geo. 3. c. 20. s. 20. no allowance shall be granted to the wives and families of men raised after the passing of that Act, but to such as are ballotted.

No allowance to be paid to the wife of any militia-man who at the time of his enrolment shall have fraudulently declared, that he had no wife or family, or to any substitute, hired man, or volunteer, who shall have falsely declared at the time of his enrolment that he had only one child; provided that, where the militia-man to whom such family belongs shall undertake and make provision for the maintenance of his other children, to the satisfaction of any justice, to whom such application shall be made for relief, such justice may order the allowance to be paid in respect of the wife and one child under the age of ten years.

No allowance shall be paid to the wife or family of any militia-man, until he joins the regiment to which he belongs, nor for a longer period than he shall be embodied, and in actual service, (43 *Geo.* 3. c. 47. s. 4); and it is by this Act declared, that the allowance shall not be made if the wife follow the regiment, or leave her children, or depart from her home, except under certain restrictions. But the stat. 53 *Geo.* 3. c. 81. repeals so much of the last-mentioned Act, and enacts, That no wife or family of any militia-man entitled to relief, shall forfeit such claim to relief by reason of her having followed, accompanied, or been with her husband in the regiment in which he shall serve, or by reason of her leaving her children or departing from home.

No allowance to be paid to the family of any non-commissioned officer or drummer, reduced for misconduct to the ranks, such reduction being certified by the commanding officer or adjutant to the clerk of the general meeting, and by him to the treasurer of the county, in the militia of which such person shall serve, and by the treasurer to the overseers of the parish in which such family shall dwell; and such allowance to cease from the time of the reduction being so certified to the overseers. (43 *Geo.* 3. c. 47. s. 6.)

The families of non-commissioned officers, drummers, ballotted men, or of substitutes, hired men, or volunteers, not to be removable, or sent to any workhouse, or poorhouse, in consequence of receiving such allowances, nor shall any persons whose families receive such allowances be deprived of their legal settlement elsewhere. (s. 8.)

The allowance to a family of a non-commissioned officer or drummer, to be repaid to the overseer who relieves them, by the treasurer of the county in which the parish is situate.

If the militia-man's family reside in any other parish than that in which he shall serve, the justice who makes order for the relief of such family, shall certify the same under his hand, and direct the overseers of the parish for which such militia-man shall

serve, to reimburse the money so paid to the overseers who shall have advanced the same. (43 Geo. 3. c. 47. s. 14.)

If by reason of the distance of any parish, in which the allowance shall be made to the family of any militia-man serving for any other parish, and the overseers entitled to the reimbursement of such allowance cannot conveniently procure payment from the overseers of the parish for which such militia-man shall have served, or be serving, such overseers may demand repayment of such allowance from the treasurer of the county in which the parish, where such allowance is granted, is situated, on production of an order or certificate of the justices.

The several statutes relating to pauper and criminal lunatics were repealed, and their provisions consolidated and amended by the 9 Geo. 4. c. 40. This Act relates to England only, and the Royal Hospital of Bethlehem is excepted from its operation by s. 58. but its regulations and directions apply to all asylums erected or established under the repealed Acts.

Pauper and criminal lunatics.

Sect. 2. provides, that justices, at quarter sessions, may direct notice to be given in the local newspapers, of their intention to take into consideration, at their next quarter sessions, the expediency of erecting asylums or houses for the reception of insane persons, or of appointing a committee to treat with the justices of adjacent counties, or the subscribers to any lunatic asylum theretofore established by voluntary contributions, to unite with them for such purpose. Sect. 3. authorizes them, at such next general or quarter sessions, by a majority of not less than seven, to appoint a committee to superintend the erection of such asylum, and to report from time to time; and by sect. 4. to appoint a committee of not less than five justices to treat with the justices of adjoining counties, or the committee of any lunatic asylum appointed for the purposes of this Act; and by s. 5. the majority of the subscribers to any lunatic asylum are authorized to appoint a committee of not

9 Geo. 4. c. 40. Justices may consider expediency of erecting asylums.

exceeding five, to treat with such committee of justices; and the agreement entered into shall be binding, upon being signed by the majority respectively of the two committees, and approved by the majority of the justices at the next quarter sessions, to whom such agreement shall be reported.

County justices to regulate.

And if the asylum be situate in any other county, the justices of the county or counties to which it belongs, may act concerning its regulations in the same manner as if such asylum were situate within their respective counties. (s. 28.)

Committee to be appointed.

The 8th section provides, that the justices at their Michaelmas sessions, and the subscribers of any such lunatic asylum, at a general meeting, after a notice in September or October in every year, shall elect the members of the committee of visiting justices, or committee of subscribers, to act together in the erection and management of such lunatic asylum; and they shall also fill up vacancies in such committees, at a meeting of such justices, or subscribers, upon due notice; the number of justices on such committee to be in the proportion to the share of the expense borne by the county, so that there be not less than seven for any county so united, and the number of the committee of subscribers to any lunatic asylum uniting with any county, shall be in the proportion specified in the agreement.

Meetings, &c. of committee.

By sect. 9. if such vacancies are not filled up, the committee may legally continue to act. By sect. 10. the committee may meet where and when they please, upon notice to the clerks of the peace; they may appoint a clerk and surveyor, and contract for the purchase of lands and the erection of buildings, &c.; such contracts to be entered in a book, to be deposited among the records of the county. (s. 10.) No visitor to be capable of having any beneficial interest or concern in such contract. (s. 11.)

Rates for expenses and loans.

The justices may make special county rates for the purposes of the Act, to be collected in the same manner, and for the same places as the ordinary county rate, (s. 12.); and may borrow money upon mortgage of the rates, when it appears the expense of

the Act will exceed one half the amount of the ordinary county rate. (s. 13.) The rates raised are to be charged with the interest of such loans, and a further sum to be applied in discharge of the securities given for the principal, in the order which they shall be drawn by lot. (s. 14.) And the justices may make provision for paying off such loans in a limited time, not exceeding fourteen years. (s. 16.)

Sections 17 to 27 contain provisions, enabling bodies politic, guardians, &c. to convey lands, &c. to such persons as the visitor shall name, in trust for the purposes of such asylums, &c. and for depositing the purchase money in the Bank, where the owners of such lands cannot be found, or refuse to execute the conveyance; and also for enabling the visitors to accept gifts, or make purchase of lands, &c. notwithstanding the statute of mortmain; and to rent premises for erecting asylums, with liberty to purchase the fee simple, at not more than thirty years' purchase.

The 29th section provides, that the lands, with the buildings thereon for the purposes of this Act, shall not be assessed to rates, taxes, or levies, at a higher value than at the time of being purchased for the use of such asylum; nor shall the buildings, erected under this or any former Act, be assessed to the house or window tax.

Lands, &c.
only rateable
at previous
value.

The major part, not less than three, of the visitors present at a meeting duly summoned, may make regulations for the management of the asylum, and appoint officers, servants, and assistants, fix their salaries, &c.; also a weekly rate for the maintenance of insane persons, not exceeding 14s. per week, to be increased by the justices, if necessary. A chaplain must be appointed for every county asylum; and the visitors may direct repairs, &c. and make order on the county treasurer for expenses, which he must obey, or subject himself to a penalty of double the sum ordered to be paid. (s. 30 to 33.)

Management
of the asy-
lum, officers,
&c.,

The visitors may sue and be sued in the name of their clerk, whose death or removal shall not abate any action. (s. 35.)

Visitors' du-
ties, &c.

Visitors may deliver any pauper to his relatives and friends, upon an undertaking, to the satisfaction of the overseers of the pauper's parish, that he shall be no longer chargeable. (s. 39.) The visitors shall, within one month, previous to the 1st of June in every year, prepare a report of all the patients confined in their asylum, *then and within twelve months preceding*, of which a transcript shall be sent to the Secretary of State for the Home Department, and a copy to the Clerk of the Commissioners under "an Act to regulate the care and treatment of insane persons in England," (9 Geo. 4. c. 41.) who shall enter the same in a register, &c.

Lists of insane persons to be made annually by overseers.

The justices of any county in England, at their petty sessions, held next after the 15th of August in each year, are required to issue their warrants to the overseers of the poor of the parishes within their respective sub-divisions; to return lists of all insane persons chargeable to their parishes, specifying the name, sex, and age of each insane person, and whether such insane person be dangerous or otherwise, and for what length of time they may have been disordered in their senses; and where confined, or how otherwise disposed of; and the overseers of the poor shall forthwith prepare such lists, which shall be verified on oath before any one justice of the peace; and, accompanied with a certificate as to the state and condition of every insane person, from a physician, surgeon, or apothecary, shall, within fifteen days, be transmitted to the clerk of the peace for the county, or his deputy, to be by him laid before the justices at their next general quarter sessions; and any overseer who shall not return such list so verified, and accompanied with such certificate, shall for every such offence be subject to a fine not exceeding 10*l.*, to be levied by distress; and it shall be lawful for such overseers to defray the necessary expenses of the examination of such insane persons, by a physician, surgeon, or apothecary, out of the poor-rates of the parish, township, or place, to which such insane persons belong; or if the legal settlement of such insane person shall not have been ascertained, then

out of the poor-rates of the parish, &c. in which such insane person shall reside, (s. 36.)

If any overseer of any parish, or place, to which any insane person shall be chargeable, shall, for the space of seven days, wilfully neglect to give information of the state of such person, to some justice of the peace acting for the division of the county, within which the said parish is situate, he shall forfeit not exceeding 10*l.*, nor less than 40*l.*, (s. 37.)

Penalty for neglect.

Upon its being notified to any justice, that a poor person chargeable to any parish, &c. within the county, is deemed insane, he shall require the overseer of the parish, &c. to bring the insane person before any two justices of the county, at a time and place to be appointed; and the said justices are to call to their assistance a physician, surgeon, or apothecary, at the charge of the said parish, &c. and if upon examination of the said poor person, or from other proof, the said justices be satisfied that such poor person is insane, they shall make inquiry into the place of his last legal settlement; and it shall be lawful for them, if they think fit, by an order under their hands and seals, directed to the said overseer of the poor, to cause the said poor person to be conveyed to, and placed in the county lunatic asylum, established under the directions of this or any former Act for the county or district, or united counties, for which, or any of which, they shall act; and if there be no such county lunatic asylum, then to some public hospital, or house duly licensed for the reception of insane persons; and it shall be lawful for the said, or any other two justices of the peace for the county, from time to time, to make order on the overseers of the parish, &c. wherein such legal settlement shall be, for the payment of reasonable charges of conveying such person to such asylum, &c., and for the payment of a weekly sum to the treasurer of such asylum, or to the keeper of such licensed house, for the maintenance and care of such person; and the overseers shall not remove such person without an order made by two justices of the county, unless such person shall be discharged as cured. *Provided*, that the overseer, or other person, conveying such

Examination, &c. of insane persons by justices.

Justices may send to asylums.

Certificate of
insanity ne-
cessary.

insane person to such asylum, &c. shall deliver a certificate from the physician, surgeon, or apothecary, called to the assistance of the justices, certifying his examination, and his opinion that the pauper is of unsound mind, (s. 38.)

Medical men
to visit asy-
lums, &c.

Medical practitioners, appointed and paid by the overseers, &c. of any parish, shall have liberty eight times a year, between eight in the morning and six in the evening, to visit pauper patients confined in such lunatic asylums, and report thereon, (s. 40.)

Disposal of
lunatic whose
settlement is
unknown.

If the place of legal settlement of such insane person cannot be ascertained, the justices may direct such person to be confined in the lunatic asylum for the county, within which such person shall have been found, and if there be no such county asylum, then in some public hospital or house licensed for the reception of insane persons; and reasonable charges, for the removal and care of such person shall be paid out of the county rates, (s. 41.)

Where set-
tlement is
not known.

Where the legal settlement of any insane person so confined has not been ascertained, two justices of the county, at any time, may inquire into the same, and if satisfactory evidence can be obtained as to such settlement, such justices may make order upon the overseers, where such last legal settlement shall be adjudged to be, for re-payment of the charges, &c. incurred within twelve calendar months previous to the date of such order, for the conveying, care, &c. of such pauper, and to provide for the future expenses necessary for maintenance, care, &c. (s. 42.)

And justices of the county may make such orders upon the overseers of any other county, jointly maintaining such asylum, (s. 43.)

Lunatics at
large may be
brought be-
fore justices,
&c.

Upon it being made known to any justice, that any person wandering at large within his jurisdiction is deemed insane, such justice may, by order under his hand and seal, require the constable, or church-wardens and overseers of the parish, &c., or some of them, to bring the said person before any two justices of the county, at a time and place appointed; and the said justices shall call to their assistance a physician, surgeon, or apothecary, at the charge of the said parish, &c.; and if upon examination the said

justices shall be satisfied that such person is so far disordered in his senses, that it is dangerous for such person to be permitted to go abroad, they may proceed as before-directed in the case of a person chargeable to any parish, within their jurisdiction: *provided*, if it shall appear that such person hath an estate more than sufficient to maintain his or her family, the justices shall direct the overseers or churchwardens of any parish, &c. where any goods, &c. of such person shall be, to seize and sell so much of such goods, &c. or receive so much of the rent of lands, &c. as is necessary to pay the charges of removal, maintenance, and care of such insane person, accounting for the same at the next quarter sessions: provided always, that nothing herein contained shall extend to prevent any relations or friends from taking any such insane person under their own care and protection, (s. 44.)

Justices refusing to make an order for the conveyance of any insane person to any lunatic asylum, &c. on the application of any overseer, shall give his reasons in writing, (s. 45.)

Justices refusing to make order

Justices shall make a return to the general quarter sessions of the peace of all cases brought before them, (s. 47.)

Justices to make returns of cases.

No bastard child born of any insane person, in any such county lunatic asylum, shall thereby gain a settlement in the parish, in which such county lunatic asylum shall be situated; but the place of legal settlement of any child so born, shall be in the parish where its mother was last legally settled, (s. 49.)

Illegitimate children of lunatics.

No insane person shall be suffered to quit the said county lunatic asylum, or to be at large, until the major part of the visitors present at a meeting duly convened, not being less than three, shall order the discharge of such person under their hands and seals, or until any two visitors, shall, with the advice of the physician, &c. discharge any lunatic confined therein, whose perfect recovery may be certified by the said physician, &c.; and if any officer, servant, or assistant in such county lunatic asylum shall, through neglect or connivance, permit such person to escape

Removal from asylum, &c.

and be at large, without such order, he or she shall, for every such offence, forfeit a sum not exceeding 40*l.*, nor less than 40*s.*, to be recovered by distress, (s. 52.)

Expenses of removal.

On the regular discharge of any pauper, the necessary expenses of removal shall be borne by the parish in which such pauper shall be legally settled, upon being allowed by two justices of the county, within which such parish shall be situated, to be paid by the overseers out of the poor-rate, (s. 53.)

Orders for maintenance of lunatics confined by order of court, &c.

In all cases where any person shall be kept in custody as an insane person by order of any court, or by his Majesty's order subsequent thereunto, two justices of the county shall inquire into the place of his settlement, and make order under their hands and seals, upon such parish where they adjudge him or her to legally settle, to pay such weekly sum for maintenance, as one of his Majesty's principal secretaries of state shall, by writing, from time to time direct; and where such place of settlement cannot be ascertained, such order shall be made on the treasurer of the county where such person shall have been apprehended. But if it shall appear that such person is possessed of sufficient property for his or her maintenance, then such justices shall order the same to be applied to such purpose. *Provided*, that the churchwardens and overseers of such parish may appeal against such order to the general quarter sessions for the county, giving reasonable notice to the clerk of the peace, &c. (s. 55.)

Appeal.

Prisoners or convicts insane.

If any person while imprisoned under any sentence of imprisonment or transportation, shall become insane, and it be so certified by two physicians or surgeons, one of his Majesty's principal secretaries of state may direct, by warrant under his hand, that such person shall be removed to such county lunatic asylum, or other proper receptacle; and every such person so removed shall remain until it be duly certified to one of his Majesty's principal secretaries of state, by two physicians or surgeons, that such person has become of sound mind. Whereupon the said secretary may issue his warrant to the keeper,

&c. directing that such person shall be removed back from thence to the prison, or other place of confinement, or be discharged, (s. 55.)

The Secretary of State for the Home Department, if he think fit, may employ any medical or other person to inspect the county lunatic asylum, and to report to him the result of such inspection and inquiry; and every such medical or other person so employed, shall be paid such sum for his attendance and trouble as to the said Secretary of State shall seem adequate and reasonable; such expense to be defrayed as the other expenses attending the county lunatic asylum so visited, (s. 57.)

Secretary of State may employ inspectors of asylums, &c.

For the regulations concerning parish apprentices, —See titles APPRENTICE and BASTARD respectively; and as to GUARDIANS and VESTRIES, see those titles.

Poor, Removal of the.

The power of magistrates to remove paupers is founded on the express provisions of the statute law. We have already noticed that by stat. 13 & 14 Car. 2. c. 12. s. 1. upon complaint by the churchwardens and overseers to one justice, within forty days, of a person coming to reside in a tenement under 10*l.* a year, any two justices of the division might, on his being *likely to become chargeable* to the parish, remove such person to the place of his last legal settlement. And by sect. 3. of the same Act, if the pauper refuse to go, or return back after being sent, he might be committed to the house of correction as a vagabond. But the power of removing persons in *anticipation* of their becoming chargeable has now been abrogated by the 35 Geo. 3. c. 101. for the reason assigned in the preamble, viz. that "many industrious poor persons chargeable to the parish, &c. where they live, merely from want of work there, would, in any other place where sufficient employment is to be had, maintain themselves and families, without being burthensome to any parish; and that such poor persons are, for the most part

Power of justices to remove paupers.

compelled to live in their own parish, and not permitted to inhabit elsewhere, under *pretence* that they are likely to become chargeable to the parish where they go for employment, although their labour might, in many instances, be beneficial to such parish."

No person removeable until actually chargeable.

The statute then enacts, "That no poor person shall, in future, be removed, by virtue of any order of removal, from the parish or place where such poor person shall be inhabiting, to their last settlement, until such person *shall have become actually chargeable* to the parish or place in which they shall inhabit; when they may be removed by *two* justices, in the same manner, and subject to the same appeal, and with the same powers, as might have been formerly done, with respect to persons likely to become chargeable."

Certain persons to be deemed "chargeable."

But by sect. 5. & 6. of the same statute, persons convicted of larceny, or other felony, rogues, vagabonds, idle and disorderly persons, and reputed thieves, as also all *unmarried women with child*, shall be considered as *actually chargeable*.

And if a married woman be pregnant with a child, which, when born, will be a bastard, the husband having been for a long time, and being still abroad, she is equally within the Act as an unmarried woman, (9 *East*. 388.)

But as the true intent and meaning of the Act is, according to Lord Ellenborough, "to prevent the removal of persons until *actually* chargeable, who were before removeable if *likely* to become so; and not to make persons removeable who were not proper objects of removal before that Act, or to tear persons away from their parents or protectors, whatever may be their condition of life, and however far removed from probability of becoming a charge upon the parish,"—It was held that a single woman, serving a master under a contract of hiring and service, could not, though pregnant of a child which would be born a bastard, be removed from her service against her own consent and that of *her master*. (The *King v. Alveley*, 3 *East*. 563.)

Parish officers refusing.

By the 13 & 14 Car. 2. s. 3. churchwardens and

overseers refusing to receive and provide work for persons removed to their parishes, may be indicted; and by the 3 Will. and Mar. c. 11. s. 10. churchwardens and overseers refusing to receive a pauper, removed by warrant of two justices, shall forfeit 5*l.* for the use of the poor, to be levied by distress.

Persons who shall unlawfully return to the parish from whence they are legally removed, shall be deemed idle and disorderly persons, and as such be committed to the house of correction for one month. (17 Geo. 2. c. 5.)

The first step which parish officers are to take, in order to procure the removal of a pauper chargeable to their parish, is, to make a complaint to a justice of the peace; for the complaint is the foundation of the justice's jurisdiction. The *order of removal*, therefore, must state not only a complaint, but that it is upon complaint of the parish officers, and show clearly the persons, with their names, who are become chargeable; and the order cannot remove more persons than the officers have complained of.

The next proceeding is *the examination*; for the order must state, that the removal was made on due examination; and though it need not state that the examination was upon oath, it ought to show that the pauper was summoned and heard; but even this is not in all cases absolutely necessary. The examination must be taken before two justices, and it must be by the same two justices who signed the order; and therefore, an order stating it, in the alternative, to have been taken "before us, or one of us," is bad. The two justices must sign the order in the presence of each other; and justices of one county cannot make an order of removal on an examination taken and transmitted to them by justices of another county, although such examination be verified by oath. An order signed by two justices separately, and in different counties, is not *void*, but only voidable on appeal.

The next proceeding is *the adjudication*; for an order of removal cannot be good, if it omit to adjudge that the persons complained of actually became

chargeable to the parish complaining, and that they are last legally settled in the parish to which they are intended to be removed. An order, removing nurse-children to their derivative settlement, is good, without stating the death of the parent, or adjudging the place to which they are removed, to be the settlement of the parents. The order must state, that the justices are justices of the peace for, and not in, the county; but it need not state that they were of the division where the pauper lives; and it is enough to name the county in the margin of the order, for the margin of an order of removal is a part of the order itself; if, however, two counties are named, and it state them to be justices of the counties "aforesaid," it is bad.

A charge must be made against a pauper returning.

The power given to a justice, on a pauper's returning to the parish whence he was removed, cannot be exercised, unless a previous charge be made on oath against the pauper who returns; and it seems that previous to the repeal of stat. 13 & 14 Car. 2. c. 12. the offence must have been proceeded against under stat. 17 Geo. 2. c. 5. only; for an order of removal does nothing more than prevent the party thereby removed from returning in a state of vagrancy.

Order conclusive as to settlement, &c. if no appeal.

If an order of removal be made, and the parish to which the pauper is thereby removed neglect to appeal to the next general or quarter session, pursuant to stat. 13 & 14 Car. 2. c. 12; 3 & 4 Will. & Mar. c. 11. s. 10. such order becomes conclusive, and no new settlement can be gained, but by some act subsequent to such removal; but it is only conclusive between those two parishes and the persons who are mentioned in the order. To render an order thus final for want of appeal, it must not only be a legal order, but it must be subsisting, for if it be abandoned, or made to an improper place, the neglect to appeal will have no effect.

Order reversed.

If an order of removal be appealed against, and reversed, two justices may remove the pauper back to the parish from whence he was sent; but if the order be confirmed, it is then conclusive that the appellants parish is the place of the pauper's last legal

settlement, and of course he cannot be removed to any other parish, on any settlement gained previous to the confirmation of the order. But if an order of removal be reversed on appeal, the respondent parish may remove the pauper to a third parish, on a settlement gained previous to the former removal; for an order reversed is only conclusive as to the appellant parish; and a bad order reversed, not on the merits, but merely from want of form, is conclusive on either parish.

Poor Rate.

“ The churchwardens and overseers of the poor of every parish, or the greater part of them, shall, by and with the consent of two justices in the same county, *dwelling in or near* the same parish or division where the same parish shall be, raise weekly or otherwise (by taxation of every inhabitant, parson, vicar, or other person, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwood in the said parish, in such competent sum and sums of money as they shall think fit,) a convenient stock of *flax, hemp, wool, thread, iron, and other ware or stuff*, to set the poor on work. And also competent sums of money, for and towards the necessary relief of the *lame, impotent, old, blind, and such other among them, being poor and not able to work*; and also for putting out poor children to be apprentices. (43 Eliz. c. 2. s. 1.)

How and by whom a poor-rate is to be made.

The mayors or other head officers of corporations shall have the same authority within their respective jurisdictions, both in and out of sessions, as is given to county justices; and every alderman of London, within his ward. (*Ibid.* s. 8.)

The churchwardens and overseers of the poor are to make the rate, the *concurrence* of the inhabitants not being necessary; and the Court of King's Bench will grant a *mandamus* to compel the overseers to make a rate; but the court will not grant a *mandamus* to make an *equal* rate, because it is presumed the

Concurrence of inhabitants not necessary.

overseers will do justice ; if they do not, the remedy is by appeal to the sessions. (2 *Salk. Rep.* 531 ; 1 *Bott.* 77. &c.)

May be made prospectively.

A poor-rate may be made prospectively, and if made for six months, it would not be bad on that account. (6 *Term Rep.* 580 ; 1 *Bott.* 80.)

Standing rate bad.

A standing rate *cannot* be made, for however just at first, it may become unequal. (2 *Salk. Rep.* 526 ; 1 *Bott.* 110.)

Upon whom to be made.

“ The poor-rate is to be made upon every inhabitant, parson, vicar, and others, and upon every occupier of lands, houses, tithes inappropriate, propriations of tithes, coal-mines, or saleable underwood in the parish.” (43 *Eliz. c. 2. s. 1.*)

Owners of houses let in tenements to be rated instead of occupiers.

In many parishes, and more especially in large and populous towns, the payment of poor's rates is greatly evaded, by reason that great number of houses within such parishes are let out in lodgings, or in separate apartments, or for short terms, or are let to tenants who quit their residences, or become insolvent, before the rates charged on them can be collected ; and it hath been found in many cases, that the persons letting such houses do actually charge and receive much higher rents for the same, upon the ground and expectation that the occupiers thereof cannot be effectually assessed to the poor's rates, and will not be charged with, or required to pay such rates, and do thereby obtain undue advantage to themselves, and by means of which the other inhabitants of such parish are unjustly compelled to pay more than their fair and due proportions to the charges of relieving and maintaining the poor ; for remedy thereof, after the 1st of January, 1820, it shall be lawful for the inhabitants of any parish in vestry assembled, and they are hereby empowered to resolve and direct, that the owners of all houses, apartments, or dwellings, in such parishes, being the *immediate lessors* of the *actual occupiers*, which shall respectively be let to the occupiers thereof at any rent not exceeding 20*l.* nor less than 6*l.* by the year, for any less term than one year ; or any agreement by which the rent shall be reserved, or made payable,

at any shorter period than three months, shall be assessed to the rates to the relief of the poor, for or in respect of such houses, apartments, or dwellings, and the out-houses and curtilages thereof, instead of the actual occupiers; and the inhabitants so assembled in vestry may, and they are hereby authorized from time to time to rescind, renew, vary, and amend, every such resolution and direction, as they shall see occasion, so as no such resolution or direction shall extend to assess or charge the owner of any house, apartment, or dwelling, which shall, with the out-houses and curtilages thereof, be let at a greater rent than 20*l.* or less than 6*l.* as aforesaid, and the church-wardens and overseers of the poor of any such parish, are hereby required and empowered to carry into effect all such resolutions and directions of the inhabitants in vestry assembled, and in pursuance and execution thereof, in all rates to be by them made for the relief of the poor, to assess by a fair and equal pound-rate the owner or owners, being the immediate lessor or lessors, or the actual occupier or occupiers, of every house, apartment, or dwelling, to which such resolution and direction shall extend, for or in respect of the same, according to the actual rent at which every such house, apartment, or dwelling, shall be let, after making a reasonable deduction from such rent, not exceeding in any case one-half of the same; and upon non-payment of the sum or sums so to be assessed, and the same may and shall be levied upon, and the payment thereof be enforced against, such owner or owners, lessor or lessors, so to be assessed, and his and their goods and chattels, in like manner as rates for the relief of the poor may by law be levied and recovered, and the payment thereof enforced, upon and against the actual occupiers on whom the same are charged. (59 *Geo.* 3. c. 12. s. 19.)

The goods, &c. of any such occupier of any such house, &c. shall be liable to be distrained, and sold, for raising so much of any such rate in arrear as shall have become due during the occupancy of the person whose goods shall be so distrained; *provided*, that every occupier who shall pay any such rate, or upon

Goods of such occupiers may be distrained.

Proviso. whose goods the same shall be levied, *may deduct the sum so paid or levied out of his rent.* (*Ibid.* s. 20.)

Receivers in certain cases to be deemed occupiers. Persons receiving or claiming the rent for any corporation, or for a minor, or for a landlord or lessor under coverture, or residing above twenty miles from the place, to be in such case rated as owners. (s. 21.)

Persons rated as owners may appeal, and they may also vote in vestry. (s. 22.)

But no owner not being an occupier shall be rated in places where the right of voting for members of parliament depends on the rating. (s. 23.)

Poor-rate a charge upon occupiers. The poor-rate is not a charge upon the land, but upon the occupier in respect of the land (1 *Nolan*, 67); and the rate must be charged upon the occupiers. (s. 160.)

What property chargeable to poor-rates. Hospital lands are chargeable. (1 *Bott.* 125.)

An officer of a college residing in distinct apartments in the college, devoted to his own use, is chargeable. (1 *Bott.* 131.)

Such parts too of lunatic hospitals as are occupied otherwise than by the objects of the institution and servants, are chargeable. (2 *Burr.* 1053.)

Corporate bodies are occupiers and inhabitants, and rateable as such; and the master and fellows of a college are also rateable, as a corporation, for what they beneficially occupy. (1 *Nolan*, 178.)

In like manner the master of a free-school is rateable for a school-house and garden occupied by him beneficially, though held by him as a recompence for teaching. (6 *Term Rep.* 332.)

So servants occupying house and land belonging to the Crown are rateable, though royal palaces are exempt. (1 *Bott.* 151.)

But soldiers are not occupiers, and stables rented for the use of a regiment are not rateable, unless occupied by a lessee on his own account. (2 *Term Rep.* 372.)

The trustees of a meeting-house of which *no profit is made, are not rateable.* (4 *Term Rep.* 79. and other authorities.)

But a private building used as a chapel, if profit is made of it, is rateable.

All real property and yearly revenue is rateable; but the stock of a farmer is *not*. (1 *Bott.* 126.)

Household furniture is not rateable (4 *Term Rep.* 771, &c.); but the stock in trade of a tradesman may, on its value being ascertained. (5 *Burr. Rep.* 2634; 1 *Bott.* 211, &c.)

Personal property is rateable; but it must be local visible property within the parish. (*Comp. Rep.* 550; 1 *Bott.* 153.)

Money at interest or invested in the funds, salaries, profits and fees of an attorney are not rateable. (*Bott.* 217. 7 *T. R.* 60.)

A vicar is chargeable for his tithes; a parson letting his tithes; a person farming tithes; a person entitled to tithe of fish caught in the parish, are each rateable. (*Bott. Nolan, &c. &c.*)

Iron and lead mines are not rateable; (5 *East.* 478; 3 *Burr.* 1341.) and the casual profits of a manor have been exempted. (2 *Burr.* 991.)

But a coal-mine, if productive, is rateable (5 *Term Rep.* 593;) and so are lime, slate, and pottery works in the hands of the occupier. (*Various.*)

Saleable underwoods are at all times liable to be rated. (10 *East.* 2. 19; 1 *Nolan*, 152, &c.)

Corporate bodies holding common or pasture lands in fee, and exercising their right of common, &c. as beneficial occupiers, are rateable.

The proprietors of water-works are rateable, not only in the parish in which their reservoirs and works are situate, but also in the several parishes through which their main pipes are laid. (1 *East*, 609, &c.)

But the Gas Light and Coke Company of Birmingham, (where it was proved the stock in trade and profit of other manufactories were not rated to the poor) was held not rateable to the amount of their profits, but for the sum for which the premises would let to other persons willing to carry on the same business. (1 *Barn. & Cres.* 506.)

The occupiers of lands, whether for pleasure or

the ordinary purposes of cultivation, and the occupiers of houses, are liable to be rated by reason of their occupancy, even though they derive no real profit from the occupancy. But as the profit arising therefrom, either actual or assumed, is the ground of the assessment, if the annual value of the land or houses be enhanced by any collateral circumstances,—as by a mineral spring, or a spring of plain water upon the land,—the rate must be according to its improved value. The same principle applies, if a dock or water-works be erected upon the land, or if its value be increased by the main-pipes from water or gas works being laid in it, the rate must be to the extent of the increased value of the land in consequence of its being so used; so if a sluice or cut of a navigated river or a canal pass over the land. The same principle applies if a barge-way or tow-path run over it, or gas-works be erected thereupon, or lime-works, slate-works, or a potter's clay-pit be upon it. In like manner the profits of a steel-yard, of a weighing-machine erected in a house, or of a carding-machine, or the like, are rateable, or where a building is let to be used as a canteen; in all these cases the land or house is liable to be rated according to its value thus improved, unless otherwise provided by some Act of Parliament. (*Steer's Parish Law.*)

Lands and buildings of a canal company are rateable at the same value as the adjacent lands, &c., and not at their improved value. (1 *Barn. & Ald.* 289.)

Lands converted into a dock are rateable (1 *Term Rep.* 219); and a dock company are rateable for tonnage duties received, although expenditure in the repairs exceeded the amount received. (5 *Man. & Sel.* 394.)

Tolls, *per se*, are not rateable, as of a ferry, &c.; but when connected with local visible property, as a towing-path, toll-gate, lock, sluice, &c. they are liable. (12 *East*, 346. 416; 4 *Term Rep.* 21. 730, &c.)

Tolls of a light-house, where vessels do not come

within the parish, are not rateable (1 *Bott.* 142); but a light-house is rateable for occupancy. (12 *East*, 46.)

Ships are rateable to the parish where the port is, to which they belong as their home (4 *Term Rep.* 771); and packet boats to the parish to which they belong. (8 *East*, 451.)

A canal company are rateable in every parish through which their canal passes, as occupiers of land covered with water (1 *Barn. & Cres.* 545); but it seems now to have been adjudged that only such occupiers as have an exclusive occupation of land, &c. so as to enable them to maintain an action of trespass for any injury done thereto, are so liable. (See *Rex v. Thomas*, 9 *Barn. & Cres.* 114. where this question is very fully discussed.)

A poor-rate must show upon the face of it in respect of what property the assessment is made upon each individual. (2 *Barn. & Cres.* 718.)

The proportion to be observed in rating must depend on local circumstances (1 *Bott.* 165; 1 *Nolan*, 236); and *rent* is not so much a criterion, as the *improved value*. (1 *Bott.* 218; 1 *Nolan*, 225.)

The rate must be made with the consent of two justices dwelling in or near the parish or division (43 *Eliz.* c. 2. s. 1); which consent must be in the following form:—

County of } We, two of his Majesty's justices of
the peace, in and for the said county, one
to wit. } whereof is of the quorum, do consent
unto and allow of this assessment. Witness our
hands the day of 183 .

The form commonly used by churchwardens and overseers is as follows:—

Form of the poor-rate.

“An assessment for the necessary relief of the poor, and for other purposes in the several Acts of Parliament mentioned relating to the poor for the parish of , in the county of , made and assessed the day of , being the first (or

second, &c.) rate, at in the pound for lands, &c. occupied, and in the pound on personal property, for the present year.

Names of Inhabitants and Occupiers.	Description of the Premises.	Annual value.	Sums assessed in the pound.
A. B.	A house and garden. }	10 0 0	0 5 0
C. D.	A farm-house, lands, and buildings. }	100 0 0	5 0 0
E. F.	A warehouse. }	10 0 0	0 2 6
The Governor and Company of New River.	20 acres of land covered with water. }	30 0 0	0 15 0

The consent of justices is a matter of course, and their act merely ministerial (1 *Nolan*, 63 ; 1 *Bott*. 77) ; but after a rate has been allowed by them, it must not be altered, even with their approbation (2 *Doug*. 465) ; if they refuse to sign the rate the court of King's Bench would grant a *mandamus* to compel them, and on their evading the signature in obedience to such *mandamus*, an attachment against them for contempt. (1 *Stra*. 393 ; 1 *Bott*. 78 ; 1 *Nolan*, 63.)

Poor Rate, publication of.

Public notice
to be given of
rate.

Churchwardens and overseers shall cause public notice to be given in the church of any rate for the relief of the poor allowed by the justices the *next Sunday* after the allowance ; and no rate shall be sufficient so as to collect the same, unless such notice shall have been given. (17 *Geo*. 2. c. 3. s. 1.)

If a poor's rate is not published in the church *next Sunday* after the allowance, it is a nullity, and payment under it *cannot* be enforced, although not appealed against. It is a radical defect in the rate itself, which nothing can cure. (17 *Geo*. 2. c. 3 ; 1 *Bott*, 78 ; 1 *Nolan*, 64. 256.)

The poor's rate may be inspected by any inhabitant at seasonable times, paying *one shilling* ; and the churchwardens and overseers shall, upon demand, forthwith give copies of the same, or any part thereof, to any inhabitant, paying at the rate of sixpence for every twenty-four names ; and the churchwardens and overseers refusing such inspection, or refusing or neglecting to give such copies, shall for every offence forfeit and pay to the party aggrieved 20*l.* to be sued for and recovered by action of debt, bill, plaint, or information. (17 *Geo.* 2. c. 3. s. 2 and 3.)

Rate may be inspected.

"Where any person shall come into or occupy any house, land, tenement, or hereditament, or other premises, out of or from which any other person assessed shall be removed, or which at the time of making the rate was empty or unoccupied, then any person so removing from, and every person so coming into or occupying the same, shall be liable to pay such rate in proportion to the time that such person occupied the same respectively, as if such person so removing had been originally rated and assessed in such rate ; which proportion in case of dispute shall be ascertained by *any two justices of the peace*." (17 *Geo.* 2. c. 98. s. 2.)

Two justices, in petty sessions assembled, on application to any person rated to *any parish rates or cesses*, to be discharged therefrom on account of his or her *inability through poverty* to pay, they may, with the consent of the churchwardens and overseers of the poor, order such poor persons to be *excused* from the payment of the rate or cess, and strike out his or her name from the assessment, and the sum at which such person was rated shall *not* afterwards be collected. (54 *Geo.* 3. c. 170. s. 11.)

Justices may excuse poor persons.

¶ Poor Rates, appeals against.

Any person *aggrieved* by a rate, or having any material objection to any person being put in, or left out of the rate, or to the sum charged on any person therein, or by any thing done or omitted by the overseers, may appeal to the next sessions, upon

Persons aggrieved may appeal.

giving *reasonable notice* ; or if reasonable notice have not been given, the justices may adjourn the appeal to the next sessions. (17 *Geo.* 2. c. 38. s. 4.)

Appeal, how
to be made,
&c.

There are some instances in which the general management of the parish matters, including the maintenance of the poor, is vested in commissioners specially appointed by local Acts, and appeals are directed to be made to them in the first instance, and afterwards to the sessions, if their determination is not satisfactory. These directions may be strictly pursued.

The appeal lies to the next sessions of the county, riding, division, or franchise, in which the parish, &c. is situate (17 *Geo.* 2. c. 38. s. 4.), except that in corporations of franchises, not having more than six justices, nor having jurisdiction over two or more whole parishes or wards, contained within such corporation, &c. the appeal may then be to the next general or quarter sessions of the *county*, &c. if the party appealing shall think fit. (1 *Geo.* 4. c. 36.)

Notice of ap-
peal.

A week's notice is usually considered "reasonable." It must be in writing, signed by the appellant, or his attorney in his behalf, and the particular causes of appeal must be stated in it (41 *Geo.* 3. c. 23. s. 4.), with the names of the persons with respect to whom the rate is required to be altered, &c. (1 *Bott.* 274.)

Grounds of
appeal.

The several grounds of appeal may be classed as follows:—1. That the appellant should not have been rated at all. 2. That the rate is unequal by reason of the appellant being over-rated, other persons being under-rated, other persons being omitted. 3. That the rate is bad on the face of it. 4. That the rate is not made by proper persons. 5. That the rate is not made for a proper purpose. 6. That the rate is not made for a proper period. (*Steer's Parish Law.*)

The 43 *Eliz.* c. 2. s. 1. directs that the rate shall be made by the churchwardens and overseers of the poor of the parish, or the greater part of them, and therefore, if other persons exercise this power, the rate is bad.

Proceedings

The justices may amend the rates on appeals only

as shall be necessary for giving relief without altering the rates, &c. with respect to other persons mentioned therein; but if on appeal from the whole rate it shall be found necessary to quash it, then they may order the churchwardens and overseers to make a new rate. (17 Geo. 2. c. 38. s. 6.)

on appeal,
amendment
of rate, &c.

The court may award reasonable costs to the party in whose favour the appeal shall be determined, and in cases of settlement by the statute 8 & 9 Will. 3. c. 30. (*Ibid.* s. 4.)

On an appeal, from the poor's rate, the quarter sessions may *amend* it without quashing it, or if necessary may quash the rate.

The quarter sessions having ordered a rate to be quashed, may order the sum charged upon any person not to be paid, and stop proceedings for the recovery thereof. (*Ibid.* s. 3.)

The rate shall be recovered as altered by the sessions. (*Ibid.* s. 7.)

And in case the name of any person shall be struck out of the rate, or any sum lowered, the sessions shall order the money which ought not to have been recovered to be repaid. (*Ibid.* s. 8.)

An appeal against a poor's rate in *London* or *Middlesex*, must be made, as in other counties, to the next (*that is, the next practicable*) general quarter sessions; though the statute 17 Geo. 2. c. 38. s. 4. gives the appeal to the next *general* or *quarter* sessions. In *London* and *Middlesex* there are four *general* or *quarter* sessions. (15 *East*, 682.)

True and just copies of all rates and assessments for the relief of the poor to be fairly wrote and entered in a book or books, to be provided by the churchwardens and overseers of the poor of every parish, &c. *within fourteen days after* all appeals from such rates are determined, who shall attest the same by putting their names thereto, and every such book to be carefully preserved by the churchwardens and overseers in *some public or other place* in every parish, &c. whereto all persons assessed or liable to be assessed *may freely resort*, and shall be delivered from time to time to the succeeding churchwardens

and overseers, as soon as they enter into office, and shall be produced at the general or quarter sessions when any appeal is to be heard and determined.

Poor Rate, Distress for.

By the 43 Eliz. c. 2. s. 4. churchwardens and overseers by warrant from any two justices, may levy poor's rate and all arrears of any one who refuses to pay according to the assessment, by distress and sale of his goods.

By the 17 Geo. 2. c. 38. s. 7. churchwardens and overseers are empowered to distrain, not only in the place for which the assessment is made, but in any other place in the same county or precinct, and on oath made that no sufficient distress can be found within the same county or precinct (which oath shall be certified under the hand of such justice on the warrant,) the goods may be levied in any other county or precinct. And if any person shall be aggrieved by such distress, he may appeal to the next general or quarter sessions of the peace for the county where the assessment was made.

The goods and chattels of any person *neglecting or refusing* to pay any rate *for the relief of the poor, church cess, or highway cess*, of any district, parish, &c. for the space of seven days, the same having been legally demanded, may be distrained, not only within such district, parish, &c. within the same county or jurisdiction; and if sufficient distress cannot be found within the same county, &c. then, upon oath thereof made before any *one* or more justices for any *other county*, &c. in which the goods shall be found, the same may be distrained in such other county, &c. where found, and sold in the same manner as if they had been found within the district, parish, &c. for which the rate had been made or was due. (54 Geo. 3. c. 170. s. 12.)

Oath of refusal to pay the rate must be made before the justices previously to distraining for non-payment. The rate cannot be distrained for by a *general* warrant made before the rate, but there

ought to be a special warrant on purpose. (2 *Salk. Rep.* 532 ; 1 *Bott.* 250.)

Where distress is made for money, justly due, for the relief of the poor, the distress itself shall not be deemed unlawful, nor shall the parties making it be deemed trespassers for want of form in the appointment of the overseers, or in the rate, or in the want of distress. (17 *Geo.* 2. c. 38.)

The laws regulating distresses for poor's rates are in general similar in every respect to those for distresses for rent (see *RENT*) ; the parties executing such a distress are equally liable as trespassers if they commit any excess, &c. ; but money may be distrained for the poor rate as well as goods (1 *Bott.* 257) ; and so may working tools in a shop, (2 *Shaw*, 126.)

Where there is not sufficient distress, two justices may, by virtue of the 43 *Eliz.* c. 2. s. 4. commit the defaulters to the common gaol until payment.

Preaching.

Every beneficed preacher, residing on his benefice, and having no lawful impediment, shall in his own cure, or some neighbouring church, preach one sermon every *Sunday* of the year. And if any beneficed person be not allowed to be a preacher, he shall procure sermons to be preached in his cure by licensed preachers ; and every *Sunday*, whereon there shall not be a sermon, he or his curate, is to read one of the homilies : no person not examined and approved by a bishop, or not licensed to preach, shall expound the Scripture, &c. : nor shall any be permitted to preach in any church, but such as appear to be authorized thereto, by showing their licence ; and churchwardens are to note in a book the names of all strange clergymen who preach in their parish ; to which book every preacher is to subscribe his name, the day he preached, and the name of the bishop of whom he had licence to preach. (*Can.* 44, 45. 49.)

If any person, licensed to preach, refuses to confirm the ecclesiastical laws, after admonition, the

license of every such preacher shall be void : And if any parson preach doctrine contrary to the Word of God, or to the Articles of Religion, notice is to be given of it to the bishop by the churchwardens, &c. So likewise of matters of contention and impugning the doctrine of other preachers in the same church ; in which case, the preacher is not to be suffered to preach, unless he faithfully promise to forbear all such matters of contention in the church, until the bishop hath taken further order therein. (*Can.* 53, 54.)

No minister shall preach or administer the sacrament in any private house, unless in times of necessity, as in case of sickness, &c. on pain of suspension for the first offence, and excommunication for the second ; which last punishment is also inflicted on such ministers as meet in private houses, to consult in any matter tending to impeach the doctrine of the Church of *England*. (*Can.* 71, &c.)

Rector.

Rector signifies in Latin, A Governor ; *Rector Ecclesiæ Parochialis*, is he who hath the charge and cure of a parish church. It has been held, that *Rector Ecclesiæ* is one who hath a parsonage where there is a vicarage endowed. And where dioceses were divided into parishes, the clergy who had the charge in those places were called rectors ; afterwards, when their rectories were appropriated to monasteries, &c. the monks kept the great tithes ; but the bishops were to take care that the rector's place should be supplied by another, to whom he was to allow the small tithes for his maintenance ; and this was the vicar. See titles *Parson*, *Vicar*.

REGISTERS OF MARRIAGES, BURLALS, AND BAPTISMS,—See PARISH REGISTERS.

RELIEF, &c. OF THE POOR,—See POOR.

REMOVAL OF THE POOR,—See POOR.

Rent, demand, tender, and recovery of.

In treating of this subject the necessary subdivisions are,

1. *The demand of Rent.*
2. *The tender of Rent.*
3. *The recovery of Rent.*

I. The Demand of Rent.

A demand of rent is indispensably necessary before a landlord can enter on the premises, unless the necessity of such demand is dispensed with by the express agreement of the tenant, or that six months rent is in arrear, and there is not a sufficient distress upon the premises. (*Co. Litt.* 153; *5 Com. Dig.* 430.)

Demand of Rent.
Demand must be made, unless, &c.

A further exemption to the necessity of the demand for rent previous to re-entry, is where the remedy is by distress (which is the legal and proper remedy for a landlord for the recovery of rent in arrear, when no other is reserved in the lease,) even though the lease expresses that the lessor "may distrain for rent behind, being lawfully demanded;" because the distress is a demand; and the tenant is not divested of his estate by a distress, as he is by re-entry; for on tender of the rent, the distress, must be immediately withdrawn. (*Moore's Rep.* 883.)

Distress of itself is a sufficient demand.

Rent is demandable and payable at any time before sun-set on the day upon which it is made payable, so that there be day-light enough for the landlord to count it by; for he is not obliged to take it by candle-light. (*Co. Litt.* 402.)

When rent demandable and payable.

It must be made by the landlord himself, or by some person specially authorized by him. (*4 Leon.* 179.)

By whom to be demanded.

II. The Tender of Rent.

A tender should be in the current coin of the realm. Stat. 56 Geo. 3. c. 68. s. 11. By the 12th

A tender must be in current coin.

section of the same statute, silver coin is reputed to be legal tender for all payments of the sum of 40s. and under.

And for the whole sum.

A tender of rent ought in general to be for the whole sum. But for such repairs as the landlord is bound by the lease to do, the tenant may deduct. (*Cro. Eliz.* 222.)

Deductions which may be made by statute.

And by the statutes 30 Geo. 2. c. 2. and 46 Geo. 3. tenants are authorized to deduct ground rent, land tax, property tax, and such sums as shall be rated on the premises, which the landlord by these statutes ought to have paid.

Tender must be actual.

A tender, to be valid, must be actual; it will not be sufficient for a tenant to say, "I am ready to pay." (1 *Leon.* 71.)

III. The Recovery of Rent.

Recovery of rent.

Rent in arrear may be recovered by three modes, viz. :—

1. By action at law.
2. By distress.
3. By ejectment.

1. By action.

Recovery by action.

The landlord's remedy by action for the recovery of rent, is either for double value or for double rent.

Action for double value.

When he proceeds for *double value*, the remedy is described by the statute 4 Geo. 2. c. 28. s. 1. which enacts that tenants for life, lives, or years, or persons coming in under or by collusion with them, holding over after the determination of the estate, after demand made, and notice in writing given by the landlord, or his agent properly qualified, to deliver up possession, such tenant continuing to hold over, shall pay to the person kept out of possession, at the rate of double the yearly value of the lands, tenements, &c.

Action for double rent.

The statute 11 Geo. 2. c. 19. s. 18. provides for the recovery of *double rent*. By that statute it is enacted, that in case any tenant shall give notice to

the landlord of his intention to quit the premises, and shall not accordingly deliver up the possession at the time, mentioned in such notice, the tenant, his executors and administrators, shall, from thenceforth, pay to the landlord double the rent or sum which he would otherwise have paid.

2. *By distress.*

In treating of this mode of recovering rent we shall inquire, Recovery by distress.

1. Of distress in general.
2. What property may or may not be taken in distress.
3. Of the method of making the distress.
4. How a distress is to be disposed of.
5. How a distress may be replevied.
6. Of ejectment.
7. Of goods fraudulently moved away to prevent distress.

I. *Of Distress in general.*

A distress for rent cannot be made till the day after that on which it becomes payable ; for it is not strictly due till midnight of the day on which it is reserved. (*Co. Litt.* 47. n.) Neither can it be taken after dark ; for no distress can be made before sun-rise, nor after sun-set. (*Ibid.* 142.) When distress can be made.

A landlord cannot distrain after the rent has been tendered ; if he does, the distress will be unlawful ; and if the tenant tender the arrears while the distress is making, or after it is taken, but before the goods are impounded, the landlord must deliver up the distress ; and if he refuses to comply, the detainer is unlawful. (*Co. Litt.* 170. b.) Cannot be made after tender of arrears.

The landlord ought to distrain for the whole rent at once, and not a part at one time and the remainder at another, if there be sufficient at first ; but should there not be sufficient, or that he mistake the value of the thing distrained, and take too little, it is by the statute 17 Cha. 2. c. 7. lawful for him or his agent to make a second distress to complete the deficiency. Distress should be for the whole sum at once ; Unless from insufficiency or mistake in value.

Arrears on two tenements let to same tenant.

If there be arrears due upon two or more tenements, let to one tenant, for different terms, a separate distress must be made upon each premises for the distinct rent due upon each. (2 *Stran. Rep.* 1040.)

Irregularity in cases of distress for rent justly due.

If a landlord, or his agent, make a distress for rent justly due, and any irregularity, or unlawful act shall be afterwards done by the party distraining, by the statute 11 Geo. 2. c. 19. the distress shall not on that account be deemed unlawful, nor the party a trespasser *ab initio* (from the beginning); but the party aggrieved shall recover full satisfaction for the special damage sustained by such irregularity, and no more, with costs. And in this case if a sufficient compensation be tendered for such irregularity, before the action is commenced, the tenant is bound to accept it, or the action will fail.

Tenant may recover double value, if distress be made for pretended arrears.

If a distress and sale be made for rent pretended to be in arrear, and it turn out that none was due, the person on whom the distress is made, may, by the statute 2 Will. & Mary, c. 5. recover double the value of such goods distrained, with full costs of suit.

Distress made without cause, &c. may be rescued.

And if a distress be made without cause, contrary to law, and if it be taken on the high-way, &c. the owner may at any time, before it is impounded, rescue it; but if it be once impounded, he cannot take it, because it is in the custody of the law. (*Co. Litt.* 47.)

II. What property may, or may not, be taken in distress.

Property which may be taken in distress.

It may be said in general, that distress may be taken of all goods and chattels personal, found on the premises demised, whether they are the property of the tenant or of a stranger.

But in case any goods are taken which are the property of a stranger, he has his remedy by action against the *tenant* for their value.

This general rule has, however, certain restrictions and limitations.

Money cannot be distrained, unless it be kept in a bag. (*Roll. Abr.* 666.) Property which cannot be taken.

Things fixed to the freehold, as chimney-pieces, furnaces, coppers, anvils, mill-stones, even though the latter be moved for a necessary purpose, as to be picked; the windows and doors of a house, unless they are removed off their hinges, cannot be distrained for rent. (*Co. Litt.* 47; 4 *Term Rep.* 565.)

Neither can those things which are in the actual use of another, as a horse when a person is upon him, a tool a man is working with, and the like. (*Ibid.*)

Also, such things as are upon the premises, in the tenant's trade; as a horse that is being shod in a smith's shop, or the materials in a weaver's shop, or cloth or garments in a tailor's shop, goods in custody of a carrier, &c. (*Ibid.*); or of a factor, (3 *Bro. & Bing.* 75.); or of a wharfinger, (1 *Bing.* 83.) and the like, are exempted.

Things which are free and wild by nature, as dogs, cats, hares, rabbits, poultry, fish, deer, are also exempt, unless they are enclosed for the purpose of production. (*Co. Litt.* 47.)

So, the tools and implements of a man's trade, as the books of a scholar, the axe of a carpenter, the loom of a weaver, and the like, are privileged from distraint while he is actually using them, and there is no other sufficient distress upon the premises. (*Noy's Max.* 66. 4 *Term Rep.* 565.)

It has also been held, that beasts of the plough are protected under the same circumstances. (*Ibid.*)

The cattle and goods of a temporary guest or traveller at an inn, are free from distress. (3 *Burr.* 1497.) But this does not extend to horses or carriages at livery, or to such persons as may have taken apartments there for any considerable time, or have hired an unfurnished room. (3 *Burr.* 1497.) And the cattle or goods must be actually within the premises of the inn itself, to be exempted from distress, and not in any place to which the tenant may have removed them for his convenience; as where a

race-horse was distrained for rent at a stable at half a mile distance from the inn, the stable being no part of the inn, the distress was determined to be a good one, and the guest had no remedy but against the inn-keeper. (*Barn.* 472.)

It has also been held, that wearing apparel, actually upon the back, is not distrainable. (*Peak's Rep.* 36.)

Goods in execution, and cattle impounded for damage, cannot be distrained, because they are already in custody of the law. (*Gilb.* 38.)

Sheep, it is said, are not distrainable, whilst other distress is to be had. (*Inst.* 133.)

At common law, neither growing corn nor hay could be taken in distress for rent ; but now, by the statutes 2 Will. 3. s. 1. c. 5. and 11 Geo. 2. c. 19. every landlord may take as a distress for arrear of rent, all sorts of corn, hay, grass, hops, roots, fruit, pulse, or other product whatsoever growing, as also any sheaves or shocks of corn, or corn loose or in the straw, or hay being in any barn or granary, or upon any hovel, stack, or rick, or otherwise, upon any part of the demised premises, and the same may lay up, when ripe, in a barn or proper place on the premises so demised or holden, giving notice to the tenant within a week then after, where the same, if removed, has been lodged.

By the 11 Geo. 2. c. 19. it is provided, that a landlord may distrain for arrears of rent, any cattle or stock of his tenant, depasturing upon any common appendant or appurtenant to the premises demised.

3. Method of making the Distress.

How distress
should be
made.

Though the landlord himself may make the distress, it is generally made by some person authorized by him, by authority in writing, called a warrant of distress.

Inventory
and copy.

An inventory is to be made of such goods as will be sufficient to cover the rent, expenses of distress, appraisement, and sale.

A fair copy of this inventory must be either personally delivered to the tenant, or left upon the pre-

mises, and a notice thereof affixed, informing him that such distress has been made, where the goods (if removed) are impounded, and the time when the rent and charges of the distress must be paid, or the goods replevied. (*Bul. Nisi Prius*, 81. 1 *Esp. Rep.* 419.)

If the goods are not removed, but secured upon the premises, a man is put in possession, who is to be paid two shillings and sixpence a day. (*Stat.* 57 *Geo.* 3. c. 90.¹)

On the seventh day after the distress, the goods, if not replevied, are to be removed, appraised, and sold, or the party distraining will be a trespasser, unless the tenant expressly request, and the landlord agree, that further time should be given for payment; in such case the tenant should sign a memorandum, specifying that possession is continued at his request, and by his desire, otherwise the landlord will be liable to an action for continuing beyond the time limited by the statute. (2 *Will. & Mary*, c. 5. 11 *Geo.* 2. c. 19. 1 *East's Rep.* 142.)

If after the sixth day from the time of the distress and notice, or such further time as may be allowed, the rent is not paid, the sheriff's office should be searched to know if the goods have been replevied, and if they have not, two sworn appraisers, disinterested in the distress, and of whom the broker who distrained *cannot be one*, must be sent for. The two

¹ By the 57 *Geo.* 3. c. 93. the costs and charges on all distresses for rent, where the sum distrained for shall *not exceed* 20*l.* are regulated as follows:—

For levying distress, three shillings.

Man in possession, two shillings and sixpence per day.

Appraisement, whether by one broker or more, sixpence in the pound on the value of the goods.

Stamp on the appraisement, the lawful amount thereof.

All expenses of advertisements, if any such, ten shillings.

Catalogue, sale and commission, and delivery of goods, one shilling in the pound on the net produce of the sale.

By the second section of the same Act, parties distraining, who shall take more than the said charges shall, on summons before the said justice of the peace, be fined treble the amount of the monies so unlawfully taken, with full costs.

For distresses for rent, where the sum distrained for shall *exceed* 20*l.* the costs are not specified.

appraisers then proceed to value the goods distrained, and take them away with them; having previously made oath before a constable that they will appraise them to the best of their judgment; a memorandum of which oath should be subjoined to, or written at the back of, the inventory, and witnessed by some person present.

The constable applied to must be of the hundred, parish or place, where the distress was made, and not one out of the district; and where the distraining broker either is chosen, or takes upon himself to act as one of the appraisers, and to value the goods, the distress is void, and if the things be taken and sold, the tenant may afterwards recover in an action for damages.

The goods being thus valued, the two appraisers generally agree to purchase them at such their own valuation; and the arrears of rent, the expenses of the distress, appraisement, and sale, having been deducted, the overplus (if any) is paid over to the owner of the goods.

Distress ought not to be excessive, but in proportion to the amount distrained for. But if there be no other distress on the land, then the taking of one entire thing, though of ever so great value, is not unreasonable. (2 *Inst.* 107.)

By the statute 8 Anne, before the removal of goods taken in execution from the premises, the person at whose suit it is, shall pay to the landlord all rent due upon the premises, *provided it does not amount to more than one year's rent.*

The sheriff is not obliged to see that any arrears of rent are due; but if the landlord acquaints him that he has a demand for rent, he is then obliged to see the rent satisfied, before the goods are removed.

4. *Distress how to be disposed of.*

After the distress has been made, the first thing to be done is to impound or secure the goods, or other things distrained, either upon the premises, (11 *Geo.* 2. c. 19.) or in some place of safety. (*Spelm.* 447.)

If the distress consists of cattle, or other living things, they must by statute 1 & 2 Will. and Mary, be impounded in a pound overt (that is, uncovered) within three miles of the place, and within the same county in which they were distrained, on pain of forfeiting one hundred shillings and treble damages.

Where the distress is of cattle, and they are impounded in a common open pound, the owner must provide them with food, as he must also, if a pound be constructed for the purpose, if he has notice from the distrainer where the distress is; but if they are impounded in a close, or covered pound, as a stable or the like, then must the landlord or person distraining provide them with necessaries. (*Co. Litt.* 47.)

Household goods and such other things as would be damaged by the weather, must be impounded in an inclosed covered pound, otherwise if they be damaged, *the distrainer will be answerable for the loss.* (1 *Inst.* 47.)

Cattle or other things must not be used or worked whilst in possession of the distrainer, unless it be for the benefit of the owner that they should. (*Cro. Jam.* 148.)

If a distress for rent die, or be damaged in the pound, without any default of the distrainer, he may make a fresh distress. (1 *Salk.* 248.)

5. *Distress how to be replevied.*

If the tenant means to replevy, as, where the distress is taken wrongfully or without sufficient cause, he must, by the statute 52 Hen. 3. c. 21. within five days after he has notice of the distress, taking with him two housekeepers, living within the city or county where the distress was made, go to the sheriff's office of such city or county, or if in the country, to a person whom the sheriff has authorized to grant replevies, and enter into a bond with the two housekeepers, as sureties, in double the value of the goods distrained, (such value to be ascertained by the oath of one or more witnesses, not interested) to try without delay the right of distraining, and to re-

turn the distress in case the right should be determined against him; upon which the sheriff will direct a precept to one of his bailiffs, that the goods may be restored to the owner, to abide the event of the suit in replevin.

6. Ejectment.

Ejectment is a remedy for the recovery of rent in arrear, or of the demised premises themselves, in case the tenant refuses to deliver them up to the landlord.

For this purpose it is enacted by the statute 4 Geo. 2. c. 28, that in all cases between landlord and tenant, when half a year's rent is in arrear, and the landlord has a right by law to enter on non-payment, and no sufficient distress is to be had, such landlord may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery thereof; or in case the same cannot be legally served, or no tenant be in possession, affix the same upon the door, or other conspicuous part, of the demised premises, mentioned in such declaration; which affixing shall be deemed legal service, and shall stand instead of a legal demand and re-entry; and in case the tenant does not file a bill in equity, or pay or tender all arrears of rent, together with full costs, within six months after such service or affixing such declaration, he shall be deprived of all relief both at law and equity.

And by the statute 1 Geo. 4. c. 87. it is enacted, that where the term or interest of any tenant, under a lease or an agreement in writing, shall have expired, or been determined by notice, either on the part of the landlord or tenant, and possession shall be refused to be delivered up, after lawful demand in writing signed by the landlord or his agent, and served personally upon, or left at the dwelling-house or usual place of abode of the tenant or person in possession, the landlord on bringing ejectment, may give notice to the tenant or person in possession to appear in the court in which the action shall have

been commenced, on the first day of the term then next following, and find bail ; and on the appearance or non-appearance of the party, the landlord may, on the production of the lease or agreement, or a verified counterpart or duplicate thereof, and affidavits that the possession has been lawfully demanded, move for a rule *Nisi*, on the tenant or other person, to enter into a recognizance with two sufficient sureties for the payment of costs and damages, to abide the issue of the action ; if such tenant or other person neglects or refuses to confirm the rule, the rule shall be made absolute for entering up judgment for the landlord.

All proceedings on the statute 4 Geo. 2. will be stayed on payment or tender to the landlord, or on payment into court, of the rent in arrear and costs. (*Bull. N. P.* 97.)

If a landlord receives rent after he has brought his ejectment, and before it be determined, it will be a waiver of the action, and he will be non-suited. (*2 Burr.* 668.)

7. *Fraudulent Removal of Goods.*

Where the tenant has deserted the premises, without leaving sufficient goods to distrain, the landlord's remedy is pointed out by the eleventh section of the stat. 11 Geo. 2. c. 19. which enacts, that if any tenant at rackrent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be *one year in arrear*, shall desert the premises, and leave them unoccupied, so that no sufficient distress can be found, two justices of the county or place (having no interest in the premises) may at the request of the landlord, or his bailiff, go and view the same, and cause to be affixed a written notice upon the most notorious part of the premises, stating on what day, (at the distance of fourteen days at least) they will return to take a second view of the premises ; and if, on such second view, the tenant, or some person in his behalf, shall not appear and pay the arrears, or there shall not be a sufficient distress upon the premises, then the said

justices may put the landlord into possession of the said demised premises ; and the lease thereof is from thenceforth void.

And by the stat. 57 Geo. 3. c. 52. the provisions of this Act are extended to tenants, who shall be in arrear one half-year's rent, and who shall hold under any demise or agreement, written or verbal, although no right or power of re-entry be reserved or given to the landlord in case of non-payment of rent.

As this statute expressly gives the landlord his remedy, in case the tenant shall desert the premises, leaving no sufficient distress thereon, it seems that goods less than sufficient will not negative the desertion contemplated by the Act. Accordingly, where a tenant had ceased to reside upon the premises for several months, or to carry on his business there, and had left thereon no article of furniture, except a French stove, and a royal coat of arms, which together had cost him 150*l.* but which were not sufficient to answer the year's rent ; the court were of opinion that the possession was merely colourable, and that the tenant must be considered to have deserted the premises. And they adjudged that the case was not altered by the landlord's knowing where the tenant's residence was ; or that when the justices first went to view the premises, a servant of the tenant was thereon ; and that, at their second view, there were men employed in repairs. (1 *Barn. & Ald.* 369.)

For the protection of landlords, where goods are fraudulently removed for the purpose of depriving them of their remedy by distress, it is provided by the statute 11 Geo. 2. c. 19. that if any tenant shall fraudulently convey away from the premises demised to him, his goods and chattels, to prevent the landlord from distraining the same for arrears of rent, it shall be lawful for any landlord (in England) or any person by him lawfully authorized, *within the space of thirty days* after such goods shall have been so conveyed away, to follow and dispose of the same, as if they had been distrained upon the premises ; *unless such goods be, bonâ fide, sold before such seizure.*

In the construction of the statute, giving this power, however, it seems from a decision in the Court of Common Pleas, that in order to entitle the landlord to seize the goods after having been removed off the premises, the removal must have taken place *after the rent had become due*, and have been *secret*, and not open in the face of day; in which case the removal could not be said to be *clandestine*, within the meaning of the statute. It was further decided in the case of *Thornton v. Adams*, that the statute applies only to the goods of the *tenant* being clandestinely removed, and not to those of a *stranger* or *lodger* in the tenant's house.

And when any goods are conveyed away, and there is sufficient reason to suspect that they are concealed in any house or place, locked up, fastened, or otherwise secured, to prevent their being taken in distress, it shall, by the above Act, be lawful for the landlord, or other person authorized to take a distress for rent, calling to his assistance the constable or other peace-officer of the parish or place where the same are suspected to be concealed, to break open in the day time, and enter into any such house or place, and seize such goods, &c. for rent in arrear, in like manner as if they had been in any open field or place. But this, it should seem, cannot legally be done without a magistrate's warrant.

All persons privy to, or assisting in, such fraudulent removal or concealment, forfeit double the value of the goods, which shall be recovered in an action; unless the value of the goods removed be 50*l.* or under, and then the double value, by the fourth section of the statute, is recoverable before two neighbouring justices of the peace, and in default of payment, the offender may be committed to hard labour for six months.

SABBATH,—See SUNDAY.

SABBATH BREAKING,—See SUNDAY.

Sacraments, The.

The Sacraments ordained in the Gospel, are, *The Supper of Our Lord*, and *Baptism*; to which is sometimes (though erroneously) added, *Matrimony*, or the Solemnization of Marriage.—See each of these subjects treated of under the heads of LORD'S SUPPER, BAPTISM, and MARRIAGE.

SEA SERVICE APPRENTICES,—See APPRENTICES.

SETTLEMENT OF THE POOR,—See POOR.

Sexton.

Appoint-
ment, salary,
&c.

Duties.

Minister may
appoint in
certain cases,
&c.

Female sex-
tons and
voters.

The inferior parish officer, called the *sexton*, is chosen by the parishioners, by whom also his fees are settled in vestry. His salary is to be paid by the churchwardens (1 *Term. Rep.* 20.) upon whom he is to attend in their office, as regards some of the affairs of the church. He is to keep the church and pews cleanly swept and aired, to make graves and open vaults, to provide (under direction of the churchwardens) candles, &c. for lighting the church, bread and wine and other necessities for the communion, and water for baptisms, to attend church during divine service, to open the doors of the pews for the parishioners, and to prevent disturbances.

Where a usage to that effect prevails, the sexton may be appointed by the minister. The amount of his salary depends greatly upon custom, and a table of his fees, as settled by the vestry, is usually hung up in the vestry-room, or in the church. (*Shaw, Par. Law.*)

It appears, from decided cases, that women may hold the office of sexton, and that women who pay

rates are entitled to vote in elections for the office.
(*Harg. Coke Litt.*)

Sextons, as well as parish clerks, are considered by the common law to have a freehold in their office, and therefore, if they be improperly removed, a *mandamus* from the Court of King's Bench will lie for their restitution. (2 *Leonard's Rep.* 18.) There are cases quoted, however, in which it was deemed sufficient answer to a *mandamus* that the sexton who had been removed held his office *at pleasure*, pursuant to ancient custom. (1 *Comp.* 413. 1 *Stra.* 115. cited in *Steer's Parish Lam*, 1830.)

By the 59 Geo. 3. c. 134. (for the erection of additional churches, and creating new parishes in consequence) provision is made that the sextons of such additional parishes shall be entitled in each division to their accustomed fees, or to a compensation for any loss sustained by a division of parishes.

Sewers' Rate.

This rate is collected under the special jurisdiction of certain commissioners, called collectively the Court of Commissioners of Sewers. They are appointed by commission under the Great Seal, and their authority is limited to the county or district to which they are appointed.

The business of commissioners of sewers is to repair sea-banks and walls, survey rivers, public streams, ditches, &c. and make order for their cleansing and reparation. They have authority, grounded on statutes from the reign of Hen. 8. and Eliz. to 7 Anne, c. 10. to inquire into all nuisances and offences arising out of, or committed by, the stopping of rivers, erecting mills, not repairing banks and bridges, &c. and to tax and assess all whom it may concern, for the amending of defaults which tend to the obstruction or hindrance of the free passage of the water through its ancient courses; to appoint workmen, bailiffs, surveyors, &c. (*Dore v. Gray*, 2 *T. R.* 358; 2 *Stra.* 1127.)

Jurisdiction
and powers.

The jurisdiction of the court of commissioners of sewers is private and special. They form a court of record, with power to fine and imprison for contempts; and in the execution of their duty they may proceed either with the aid of a jury, or upon their own view, and may make order for the removal of any annoyances, or the conservation of the sewers. But they cannot intermeddle unless the nuisance or prejudice be a public one. (1 *Sid.* 145. *Laws of Sew.* 3 *Black. Comm.* c. 6.)

Assessment
of rates.

The commissioners may assess such rates upon the owners of lands within their district as they shall judge necessary; and if any person refuse to pay them, the commissioners may levy the same by distress of his goods and chattels; or they may, by stat. 23 Hen. 8. c. 5. sell his freehold lands; and by stat. 7 Anne, c. 10. his copyhold also, to pay such rates and assessments.

All owners to
be taxed
equally.

The commissioners are to tax all equally, who are in danger to receive any damage by the waters, and not only those whose lands are next adjoining; because the rage of the waters may be so great, that the land contiguous may not be of the value to make the banks; and therefore the statutes will have all that are in danger to be contributory. (5 *Rep.* 100.)

Superior ju-
risdiction of
the Court of
King's
Bench.

The conduct of the commissioners of sewers is under the discretionary coercion and controul of the Court of King's Bench, which will prevent or punish any illegal or arbitrary proceedings. (1 *Vent.* 66, 67. *Salk.* 146.)

Sewers near
London.

By stat. 3 James 1. c. 14. it is enacted, that all ditches, banks, bridges, streams, and water-courses, within two miles of London, falling into the Thames, shall be subject to a commission of sewers; and the Lord Mayor, Court of Aldermen, &c. are to appoint persons with full powers of commissioners of sewers.

Sunday.

Profanation of the Lord's Day is classed by Blackstone among offences against God and religion, punished by the laws of England. For, besides the notorious indecency and scandal of permitting any secular business to be publicly transacted on that day, in a country professing Christianity, and the corruption of morals which usually follows its profanation, the keeping one day in seven holy, as a time of relaxation and refreshment, as well as for public worship, is of admirable service to a State, considered merely as a civil institution. The laws of King Athelstan forbade all merchandizing on the Lord's Day under very severe penalties. And by the stat. 27 Hen. 6. c. 5. no fair or market shall be held on the principal festivals, Good Friday, or any Sunday, (except the four Sundays in harvest,) on pain of forfeiting the goods exposed to sale. And, by the stat. 1 Car. 1. c. 1. no person shall assemble, out of their own parishes, for any *sport* whatsoever, upon this day; nor, in their parishes, shall use any bull or bear beating, interludes, plays, or other unlawful exercises or pastimes, on pain that every offender shall pay 3*s.* 4*d.* to the poor. This statute does not prohibit, but rather impliedly allows, any innocent recreation or amusement within their respective parishes, even on the Lord's Day, after divine service is over. But by stat. 29 Car. 2. c. 7. no person is allowed to do any worldly labour on the Lord's Day, (except works of necessity and charity,) or to use any boat or barge, or expose any goods to sale, except meat in public houses, and milk before nine in the morning, and after four in the afternoon, on forfeiture of 5*s.* Nor shall any driver, carrier, or the like, travel on that day, under pain of 20*s.* (*Stat.* 29 Car. 2. c. 7.)

Profanation of the Lord's Day punishable.

The laws prohibiting fairs and markets.

Sports.

Worldly labour.

The goods exposed to sale on a Sunday to be forfeited to the poor, &c. on conviction before a justice of the peace, who may order the penalties and forfeitures to be levied by distress; and may allow one third to the informer. But this is not to extend to

Selling goods.

Exceptions: dressing meat in families, inns, cook-shops, or victualling houses.
Inns, &c.

Mackarel. Mackarel may be sold on *Sundays*, before and after divine service; stat. 10. &c. 11 Will. 3. c. 24.—

Watermen. Forty watermen are permitted to ply on the *Thames*, between *Vauxhall* and *Limehouse* on *Sundays*; (stat. 11 & 12 Will. 3. c. 21.—

Fish carriages. Fish carriages are allowed to travel on *Sundays*, either laden or returning empty; stat. 2 Geo. 3. c. 15.—

Bakings. Bakers are permitted to dress dinners on a *Sunday*, as a work of necessity. (5 *Term Rep.* 449.) But by stat. 34 Geo. 3. c. 61. every baker shall be subject to a penalty of 10*s.* to the use of the poor, for exercising his business as a baker at any time on the Lord's Day, except that he may *sell bread between nine in the morning and one in the afternoon*; and may also, *within that time, bake meat, puddings, and pies*, for any person who shall *carry or send the same to and from the place where baked*. (*Rex v. Cox*, 2 *Burr.* 785.)

Public Debatings. By stat. 21 Geo. 3. c. 49. passed to restrain an indecent practice which had become very prevalent, it is enacted, That any house or place opened for public entertainment, or for publicly *debating* upon any subject, upon the Lord's Day, and to which persons shall be admitted by money or tickets sold, shall be deemed a disorderly house. And the keeper (or person acting as such) shall forfeit 200*l.* and be punished as in the case of keeping a disorderly house. And the person managing such entertainment, or acting as president, &c. of any public debate, shall forfeit 100*l.* And every servant receiving money or tickets from the persons coming, or delivering out tickets of admission, shall forfeit 50*l.* Sect. 1, 2. And every person advertising or printing an advertisement of such meeting shall also forfeit 50*l.* Actions to be brought within six months. Sect. 5. Act confined to London, Westminster, and the neighbourhood.

Persons exercising their calling on a *Sunday*, are only subject to one penalty; for the whole is but one offence, or one act of exercising, though continued the whole day. (*Comp.* 640.)

Law processes are not to be served on *Sunday*, unless it be in cases of treason or felony ; or on any escape, by virtue of stat. 29 *Car.* 2. c. 7. *Sunday* is not a day in law for proceedings, contracts, &c. And hence it is, that a sale of goods on this day in a market overt is not good : and if any part of the proceedings of a suit, in any court of justice, be entered and recorded to be done on a *Sunday*, it renders it all void. (2 *Inst.* 264. 3 *Shep. Abr.* 181.)

Law processes not to be served.

TABLES OF ASSESSED TAXES,—See ASSESSED TAXES.

TAXES ASSESSED,—See ASSESSED TAXES.

Tithes.

Tithes are a species of incorporeal hereditaments, and are defined to be “a *tenth* part of the increase yearly arising and renewing.” 1st, Immediately, from the soil ; i. e. from the profits of the land. 2dly, Mediatly ; i. e. from the increase of animals. 3dly, By the labour and personal industry of man. The first species is usually called *predial*, as of corn, hay, grass, hops, fruit, herbs, wood, &c. including tithe for the agistment of cattle. The second, *mixed*, as of wool, calves, lambs, pigs, chickens, milk, eggs, &c. consisting of natural products, but matured and preserved in part by the care of man ; and of these two sorts the tenth must be paid in gross. The third species is usually termed *personal*, and are such as spring from manual occupations, as from trade, fisheries, and the like ; and of these only the tenth part of the clear or net gains or profits are due. (*Wats. Cler. Law*, c. 49.)

Tithes of three kinds.

Tithes, with regard to value, are divided into Great and Small. *Great Tithes* in general comprehend the tithes of corn, peas, beans, hay, and wood. (*Degge*, p. 2. c. 1.) *Small Tithes* comprehend all other species of predial tithes, together with those called personal or mixed.

Tithes, great, and small.

Distinction
between.

And this distinction of *great* or *small tithes* depends on the nature and quality of the thing, and not upon the place or mode of cultivation, or the quantity produced, or the use to which it is applied. (*Wats. Cler. Law*, c. 39.)

To whom to
be paid.

The only criterion for determining what are great, or small, or vicarial tithes, is by endowment or prescription: the former, when pleaded, must be produced; the latter is founded on a supposed endowment, which is lost. Grass, hay, and wood, in some parishes, are great, in others, small tithes, according to prescription, founded on endowment, or such usage as pre-supposes an endowment. (2 *Ves.* 511.)

Great tithes are commonly called *parsonage tithes*; small tithes *vicarial tithes*; as being in general payable, the one to the parson, or rector, the other to the vicar.

When tithe
to be paid.

The rector is *primâ facie* entitled to ALL the tithes of the parish, and nothing can be presumed in favour of the vicar, without endowment or prescription. (*Yelv.* 86.)

As a general rule, it may be observed, that tithe ought to be paid as soon as the tenth part can be severed from the whole, if there be no custom to the contrary; and this as often as a renovation or fresh crop is severed from the same land in the course of the year. (2 *Gwill.* 563.)

On what
things.

And the tithe-holder or his deputy has a right to see that the same is fairly set forth from the other nine parts, before any particle of those nine parts is removed from the field. (2 *Ibid.* 796.)

In general, tithes are to be paid for every thing that yields an annual increase, as corn, hay, fruit, cattle, poultry, and the like; but not for any thing that is of the substance of the earth, or is not of annual increase; as stone, lime, coal, ores, and the like; nor of creatures that are of a wild nature, as deer, hawks, &c., whose increase is not annual but casual: though for deer and rabbits, tithes may be payable by custom. (2 *Blacks. Comm.* ch. 3.)

Methods of
exemption
from tithes.

The methods by which lands and their occupiers, may be exempted from the payment of tithes are

either, first by real composition, or, secondly, by custom or prescription.

First, a real composition is when an agreement is made between the owner of the lands, and the parson or the vicar, with the consent of the ordinary or patron, that such lands for the future shall be discharged from payment of tithes, by reason of some land or other real recompense given to the parson, in lieu and satisfaction thereof. (2 *Inst.* 490.) And these real compositions have ever been held and allowed in England, to be a good discharge of the payment of tithes; and hence have arisen all such compositions as exist at this time by force of the common law. (2 *Black. Comm.* 28.) But the possessions of the church being by this and other means, every day diminished: the disabling statute 13 Eliz. c. 10. was made: which prevents, among other spiritual persons, all parsons and vicars from making any conveyances of the estates of their churches, other than for three lives, or one and twenty years; so that now, by virtue of this statute, no real composition made since the 13 Eliz. is good for any longer term than three lives, or one and twenty years, though made by consent of the patron and ordinary: which has indeed effectually demolished this kind of traffic; such compositions being now rarely heard of, unless by authority of Parliament. (2 *Black. Comm.* 29.) And even a composition established by Act of Parliament, if made since the enactment of the 13 Eliz. c. 10. and confirmed by a decree of a court of equity, though good for the life of the incumbent, is not binding upon his successor. If the successor continues to receive the next payment due after the death of his predecessor, he is accountable to the executors only for such portion of it as the value of the tithes, if paid in kind, accruing due between the last composition received by the late incumbent and his death, would have amounted to, and not *pro rata*, according to the time which had run before his death from the last payment. (10 *East's Rep.* 269.) Neither is the succeeding incumbent bound by a lease made comformable and

prior to the 13 Eliz. but such lease is entirely void at the decease of the parson or vicar who made it.

Custom, or
prescription.

Secondly, a discharge by custom or prescription, is where, time out of mind, such persons or such lands have been, either partially or totally, discharged from the payment of tithes. And this immemorial usage is binding upon all parties; as it is in its nature an evidence of universal consent and acquiescence, and with reason supposes a real composition to have been formerly made. This custom or prescription is either *de modo decimandi*, or *de non decimando*. (2 *Black. Comm.* 29.)

Modus.

A *modus decimandi*, commonly called a *modus* only, is a composition for tithes in kind, within a certain district; whereby the layman is discharged from rendering his tithes, on his paying to the parson in lieu thereof, what the local custom of that place directs. (*Sullivan's Lectures*, 92.) This is sometimes a pecuniary compensation, as twopence an acre for the tithe of land: sometimes it is a compensation in work and labour, as that the parson shall only have the twelfth cock of hay, and not the tenth, in consideration of the owner's making it for him: sometimes in lieu of a large quantity of crude and imperfect tithe, the parson shall have a less quantity, when arrived to a greater maturity, as a couple of fowls in lieu of tithe eggs; and the like.

A prescription *de non decimando*, is a claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. Thus, the King, by his prerogative, is discharged from all tithes. (*Cro. Eliz.* 511.) So a vicar shall pay no tithes to the rector, nor the rector to the vicar, &c.

Manner of
setting out
tithes.

The manner or form of setting out for payment of tithes, is for the most part governed by the custom of the place. In the case of *Hall v. Machet*, 4 *Gwill.* 1460, it was held, that a farmer may cut down a field in portions most convenient to himself, provided it be not done vexatiously, and with a design to trouble the clergyman; though he must not proceed to carry away such separate cuttings before he has set out the tithe of all the cuttings.

But though it is a general rule of law that a farmer may not at his pleasure tithe and carry *part* of a field of corn before the whole has been tithed, and then proceed to another field, &c. so as to oblige the parson to come to the same field at another time, to take his tithe: yet there is no rule of law which obliges a farmer (all fraud and vexation apart,) to tithe and carry the whole of that part of the field lying in one parish before tithing any part of the same field in another parish; and this without previous notice of his intention to carry such part. (12 *East's Rep.* 239.)

And the general rule, that the farmer must not carry part of the crop of a field of corn before the whole has been tithed, must be understood with all necessary exceptions of partial ripeness, and whether the neglect of taking the advantage of which would be prejudicial to the crop. (*Ibid.*)

The parson, vicar, impropriator, or farmer, cannot come himself and set forth his tithes, without the license and consent of the owner; and if he shall of his own head tithe the corn or hay of any landholder within his parish, and carry it away, he is a trespasser, and an action will lie against him for it. (*Degge*, p. 2. c. 14.)

But every person is bound of common right, to cut down and set out the tithes of his own lands. And that it may be done faithfully and without fraud, the laws of the Church entitle the parson to have notice given him; and by stat. 2 & 3 Edw. 6. c. 13. it is enacted, that at all times, whensoever, and as often as, any predial tithes shall be due, at the tithing of the same, it shall be lawful to every party to whom any of the said tithes ought to be paid, or his deputy or servant, to view and see their said tithes justly and truly set forth and severed from the nine parts.

And in *Halliwel v. Trappes*, 2 *Taunt. Rep.* 55. it was held, that the parishioner must leave his nine parts in the field a reasonable time for the parson to compare the tithe with them. From the same case it also seems, that if the parishioner reaps one land,

and in coming back along the same land to reap the next, throws out the tithe of the first, and shocks his nine sheaves, he does not give a sufficient time for the parson to compare. But if, after due notice, the tithe owner does not come in convenient time, it is his own fault, and he will lose the benefit of making the comparison. (13 *East's Rep.* 269.)

In the case of *Butter v. Heathby, Burr.* 1891, it was held that the parishioner was bound to give the parson notice of the time and setting out of the tithes.

The care of the tithes, as to waste or spoiling, after severance, rests upon the parson, and not upon the owner of the land. For it seems that the parson is at his peril to take notice of the tithes being set out; and so it has been declared, that although the parishioners ought *de jure* to reap the corn, yet they are not bound to guard the tithes of the parson. (*Gibs.* 689.)

But after the tithes are set forth, he may of common right come himself, or his servants, and spread abroad, dry, and stack his corn, hay, or the like, in any convenient place or places upon the ground where the same grew, till it be sufficiently weathered and fit to be carried into the barn. But he must not take a longer time for the doing thereof, than is "convenient and necessary."

And it shall be lawful quietly to take and carry the same away. And if any person carry away his corn or hay, or his other predial tithes, before the tithe thereof be set forth; or willingly withdraw his tithes of the same, or of such other things whereof predial tithes ought to be paid; and if any person do stop or let the parson, vicar, proprietor, owner, or other their deputies, or farmers, to view, take, and carry away their tithes as is abovesaid, he shall forfeit double value, with costs; to be recovered in the ecclesiastical court. (2 & 3 *Edw.* 6. c. 13. s. 2.)

And the parson may carry his tithes from the ground where they grew, either by the common way, or any such way as the owner of the land uses to carry away his nine parts. (*Degge*, p. 2. c. 14.)

And if the owner of the soil, after he has duly set forth his tithes, will stop up the ways, and not suffer the parson to carry away his tithes, or to spread, dry, and stack them upon the land ; this is no good setting forth of his tithes without fraud within the statute : but the parson may have an action upon the said statute, and may recover the treble value ; or may have an action upon the case for such disturbance ; or he may, if he will, break open the gate or fence which hinders him, and carry away his tithes. (*Deg. p. 2. c. 14.*)

But in this he must be cautious, that he commit no riot, nor break any gate, rails, locks, or hedges, more than necessarily he must for his passage. (*Deg. p. 2. c. 14.*)

And when he comes with his carts, teams, or other carriages, to carry away his tithes, he must not suffer his horses or oxen to eat and depasture the grass growing in the grounds where the tithes arise, much less the corn there growing or cut : but if his cattle do in their passage, against the will of the drivers, here and there snatch some of the grass, this is excusable. (*Deg. p. 2. c. 14.*)

If tithes set forth remain too long upon the land, the owner of the soil may distrain them as damage feasant ; but then, if he be sued for them, in order to justify, he must set forth how long they had remained before he took them ; and when they shall be said to remain too long is triable by the jury.

Or an action upon the case will lie against the parson for his negligence in this behalf ; but no action in such case will lie, unless the parishioner has duly set forth his tithes, and has also given notice to the parson that they are so set forth. (*Deg. p. 2. c. 14.*)

Tithing-man.

The tithing-man is now a kind of petty constable, Tithing man, sworn into office usually by justices of the peace. what. (*Dalt.*)

There is frequently a tithing-man in the same

town with a constable, who acts as a deputy to execute the office in the constable's absence; but there are some things which a constable has power to do, which tithing-men and headboroughs cannot intermeddle with. (*Ibid.*)

Where there is no constable in a parish, the office of tithing-man, or headborough, seems to be the same under another name.

TREASURER OF THE POOR-HOUSE,—See GUARDIANS, &c.

Vestry.

Vestry, what. The *vestry* is a place or room adjoining to a church, where the vestments of the minister are kept; whence its name. The term is also applied to meetings of the parishioners in such room; the persons assembled being called a vestry, from the title of the place in which they meet.

May be held
in the
church.

What is designated a vestry meeting need not imperatively be held in the vestry of the church; for it may be convened, and be equally valid, in the church itself: in either case the ecclesiastical court has jurisdiction over all the proceedings, in respect of any misconduct or disorder; though more license is permitted in the vestry-room than would be excusable in the church.

The following are the provisions of the new Vestry Act.

The 1 & 2 Will. 4. c. 60. (commonly called the *New Vestry Act*,) after reciting that "it is expedient to provide for the election of vestries, and of auditors of parish accounts," enacts, that the Act and its provisions shall apply to and may be adopted, under and subject to the regulations it contains, by any parish or parishes in England or Wales.

Manner of
adopting Act,
in parishes
where inha-
bitants do not
assemble in
open vestry.

Sect. 2. That when in any parish certain of the rate-payers thereof may desire that the said parish should come under the operations of this Act, then and in that case any number of rate-payers, amounting at least to fifty parishioners, may, on some

day between the 1st day of December and the 1st day of March, deliver a requisition, by them signed, and describing their places of residence, to the churchwardens, or to one of them, serving for the said parish, requiring of the said churchwardens to ascertain, according to the manner hereinafter-mentioned, whether or not a majority of rate-payers of the said parish do wish and require that this Act and the provisions thereof should be adopted therein; and which requisition may be in the form or to the tenor and effect following, that is to say:

“To the churchwardens of the parish of [*insert here the name of the parish.*] Form of requisition.

“We whose names are hereunto subscribed, being rate-payers, resident in the said parish, and respectively rated or assessed to the relief of the poor thereof, do hereby require you, the said churchwardens, to ascertain and determine the adoption or non-adoption of an Act of the second year of the reign of King William the Fourth, chapter , intituled an Act [*here insert the title of the Act*].

“Dated this day of , in the year of our Lord .”

3. That the said churchwardens of the said parish shall on the first Sunday in the month of March next after the receipt of such requisition, affix, or cause to be affixed, a notice to the principal doors of every church and chapel within the said parish, specifying some day, not earlier than ten days, and not later than twenty-one days after such *Sunday*, and at what place or places within the said parish, the rate-payers are required to signify their votes for or against the adoption of this Act; which votes shall be received on three successive days, commencing at eight o'clock in the forenoon, and ending at four o'clock in the afternoon of each day; and the said notice shall be to the following effect: .

Upon receipt of requisition, churchwarden to give notice of time and place for receiving votes.

“The churchwardens of this parish [*insert here the name of the parish*] having received a requisition duly signed, according to the provisions of an Act of the second year of the reign of William the Fourth, chapter , for the better regulation of vestries, the Form of notice.

rate-payers of this parish of [*insert here the name of the parish*] are hereby required, all and each of them, on the day of next, and the two following days, to signify to the said churchwardens by a declaration, either printed or written, or partly printed and partly written, addressed and delivered to one of the churchwardens at [*insert here the place*], their votes for or against the adoption of the aforesaid Act for the better regulation of vestries by the rate-payers of this parish.

(Signed)

“ Churchwardens.”

Form of declaration.

4. That the said declaration shall be to the following effect :

“ I, A. B. of street [*or* place *or* house], in the parish of , vote [*for or* against, *as the case may be*] the adoption of the Act of the second year of the reign of William the Fourth, chapter , for the better regulation of vestries by this parish.”

Churchwardens to declare whether the votes are in favour of adopting this Act.

5. That the said churchwardens shall carefully examine the votes to them delivered as aforesaid, and shall compare them with the last rate made for the relief of the poor in the said parish, and shall be empowered to call before them any parish officer touching the said votes, or any rate-payer so giving his vote, and after a full and fair summing up of the said votes, shall, by public notice, according to the form and manner hereinafter described, declare whether or not two-thirds of the votes given have been given in favour of the adoption of the said Act : provided always, that the whole number of persons voting shall be a clear majority of the rate-payers of the parish ; provided also, that the adoption or non-adoption of this Act shall be decided by such number of votes, as aforesaid.

Rate-payers may inspect votes.

6. That any of the rate-payers of the aforesaid parish, not exceeding five together, may inspect, at or in the vestry-room, or at some convenient place within the same parish, and they are hereby empowered to inspect, the votes so given for and against the adoption of the Act, at all seasonable times within

one month after such notice shall have been given ; and the churchwardens of the said parish are hereby required carefully to preserve the said votes, and freely to permit and allow the examination thereof by the aforesaid rate-payers of the said parish, at such seasonable times within the period aforesaid.

7. That no person shall be deemed a rate-payer, or be entitled to vote, or do any other act, matter, or thing, as such, under the provisions of this Act, unless he or she shall have been rated to the relief of the poor for the whole year immediately preceding his so voting, or otherwise acting as such rate-payer, and shall have paid all the parochial rates, taxes, and assessments, due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such voting.

No person to vote unless he has been rated one year.

8. That notice of the adoption of this Act by any parish shall be forthwith given by the churchwardens for the time being of the said parish in the *London Gazette*, and in one or more of the public newspapers circulating in the county in which the said parish may be situated, and by affixing a notice of the same to the principal doors of every church or chapel of the said parish ; which notice shall be to the following effect :

Notice of adoption of the Act.

“ Parish of [*here insert the name of the parish*].

“ Notice is hereby given, that the above-named parish has adopted the Act of the second year of the reign of King William the Fourth, chapter , intituled “ *An Act* [*here insert the title of the Act*] ; and that the numbers of the majority and minority of votes given for and against the adoption of the said Act are as follows ; that is to say, votes for the adoption thereof, and votes against the adoption thereof.

“ Dated this day of in the year of our Lord

(Signed)

“ Churchwardens.”

9. That if the rate-payers shall determine, in the

No similar requisition to

be made
within three
years.

manner as aforesaid, against the adoption of this Act, then and in that case it shall not be lawful to make another registration for the same purposes within three years after such determination.

This Act to
take effect in
all parishes
in which the
adoption has
been notified.

10. That in any parish in which public notice of the adoption of this Act in the manner as aforesaid shall be so made and given, this Act shall immediately become the law for electing vestrymen and auditors of accounts in the said parish, in manner hereinafter mentioned.

Penalties on
churchwardens
and
others refusing
to call
meetings, &c.

11. That if any churchwarden, rate-collector, overseer, or other parish officer, shall refuse to call meetings according to the provisions of this Act, or shall refuse or neglect to make and give the declarations and notices directed to be made and given by this Act, or to receive the vote of any rate payer as aforesaid, or shall in any manner alter, falsify, conceal, or suppress, any vote or votes as aforesaid, such churchwarden, rate-collector, overseer, or other parish officer, shall be deemed and taken to be guilty of a misdemeanour.

Notices of
election to
be given.

12. That on some Sunday, at least 21 days previously to the day of annual election of vestrymen, a notice pursuant to this Act, signed by the churchwardens, shall be affixed on the principal doors of any church or chapel in the said parish, and at other usual places, in the following terms:

“Parish of [*here insert name of parish*].

“The parishioners duly qualified, according to the provisions of the Act of the second year of the reign of King William the Fourth, intituled *An Act* [*here insert the title of the Act*], are hereby required to meet at on the day of , conformably to the provisions of the said Act, then and there to consider of and elect fit and proper persons to be vestrymen and auditors of accounts of the parish of , for the ensuing year, that is to say, .

Members of the vestry,

Auditors of accounts.”

Rate-collectors,
&c. may be
summoned
to assist at
the election.

13. That the churchwardens may summon the rate-collectors to attend them on the said day of annual election, in order to assist them in ascertain-

ing that the persons presenting themselves to vote are parishioners rated to the relief of the poor of the said parish, and duly qualified to vote at the said election.

14. That on the day of annual election for vestrymen and auditors in any parish adopting this Act, each parishioner then rated, and having been rated to the relief of the poor one year, desirous of voting, do meet at the place appointed for such election, then and there to nominate eight rate-payers of the said parish as fit and proper persons to be inspectors of votes, four of such eight to be nominated by the churchwardens, and the other four to be nominated by the meeting; and after such nomination the said parishioners shall elect such parishioners duly qualified as may be there proposed for the offices of vestrymen and auditors; and the chairman shall at such meeting declare the names of the parishioners who have been elected by a majority of votes at such meeting.

Form of proceeding at annual elections.

15. That any five rate-payers may then and there, in writing or otherwise, demand a poll, which shall be taken by ballot, each rate-payer delivering to the aforesaid inspectors two folded papers, one of which papers shall contain the names of the persons for whom such parishioner may vote, as fit and proper to be auditors of accounts; provided always, that each rate-payer shall have one vote and no more for the members of the vestry, and one vote and no more for the auditors of accounts, to be chosen in the said parish.

A ballot may be demanded.

16. That the inspectors of votes shall deposit the said folded lists, without previously opening the same, in two separate sets of ballotting glasses or boxes, one set for the vestry lists, and another for the auditors' list; and that the said ballotting glasses or boxes shall be closed at the time fixed for the termination of the voting, that is, at four o'clock in the afternoon of the last day of election.

Mode of voting.

17. That after the close of the said ballot, the aforesaid inspectors shall proceed to examine the said votes, and if necessary shall continue the examina-

Duty of inspectors.

tion by adjournments from day to day, not exceeding four days, Sunday excepted, until they shall have decided upon the persons duly qualified, according to the provisions of this Act, who may have been chosen to fill the aforesaid offices.

In case of
equality of
votes.

18. That if an equality of votes should appear to the aforesaid inspectors to be given for any two or more persons to fill any or either of the said offices, in that case the inspectors shall decide by lot upon the person or persons so to be chosen.

Penalty for
forging or
falsifying any
voting list, or
obstructing
the election.

19. That if any person do forge, or in any way falsify, any name or writing on any paper or list purporting to contain the vote or votes of any parishioner as aforesaid so voting for vestrymen or auditors, or do by any contrivance attempt to obstruct or prevent the purposes of such mode of election, the persons so offending shall, upon information laid and conviction before any two or more justices of the peace, having jurisdiction in the parish so adopting this Act, be liable to a penalty of not less than 10*l.* or not more than 50*l.*; and in default of payment thereof, shall be imprisoned for a term not exceeding six nor less than three months; and any fine so levied shall be given, half to the informer, who shall have informed against the person so offending, and the other half to the poor of the parish in which the said offence shall have been committed.

Public notice
to be given of
vestrymen
and auditors
chosen by
parishioners.

20. That the aforesaid inspectors shall, immediately after they shall have decided upon whom the aforesaid elections have fallen, deliver to the churchwardens, or to one of them, serving for the parish so adopting this Act, a list of the persons chosen by the parishioners to act as vestrymen and auditors of accounts; and the said list, or a copy thereof, shall be affixed to the doors of the churches and chapels, or other places chosen for the purposes of public notice in the said parish.

Penalty on
inspector for
making in-
correct
return.

21. That if any inspector as aforesaid shall wilfully make or cause to be made an incorrect return of the said votes, every such offender shall, upon information laid by any person before two or more justices of the peace having jurisdiction in the said

parish, and upon conviction for such offence, be liable to a penalty of not less than 25*l.* and not exceeding 50*l.*

22. That in all parishes adopting this Act, the meeting of parishioners for the election of vestrymen and auditors of accounts by the parishioners, shall take place in the month of *May* in every year; provided always, that when a ballot is demanded at such election, the same shall commence on the following day, and continue for three successive days, commencing at eight o'clock in the forenoon, and closing at four o'clock in the afternoon in each day; provided also, that the day at which such elections shall commence shall in the first instance be appointed by the churchwardens of the parishes adopting this Act, but in every subsequent year shall be appointed by the vestry: provided also, that when by reason of the populousness of any parish, it shall have been or shall be divided into districts for ecclesiastical or other purposes, then and in that case the said votes shall be taken according to the aforesaid mode of election, in some convenient place, at the discretion of the churchwardens, in each of the several districts of the said parish.

Elections to be annual.

23. That in all parishes adopting this Act, the vestry appointed and elected as hereinbefore mentioned, shall, when the said Act shall come into full effect, consist of a certain number of resident householders; that is to say, twelve vestrymen for every parish in which the number of rated householders shall not exceed 1000; and twelve other additional vestrymen, that is, twenty-four vestrymen for every parish in which the rated householders shall exceed 1000; and twelve other additional vestrymen, that is, thirty-six vestrymen, for every parish in which the number of rated householders shall exceed 2000, and so on in the proportion of twelve additional vestrymen for every 1000 rated householders; provided always, that in no case the number of vestrymen shall exceed 120; provided always, that in any parish wherein a greater number of vestrymen are given by special Act of Parliament; and provided always,

Vestry to consist of not less than 12 nor more than 120 householders.

that the rector, district rector, vicar, curate, perpetual curate, and churchwardens of the parish, shall constitute a part of the said vestry, and shall vote therein, in addition to the vestrymen aforesaid elected under this Act; provided always, that no more than one such rector, or other such minister as aforesaid, from any one parish or ecclesiastical district as aforesaid, shall *ex officio* be a part of, or vote at any vestry meeting.

Proportion of existing vestry to go out of office at each of the three first elections under this Act.

24. That at the first election for vestrymen after the adoption of this Act, in any parish, one-third of the existing vestry, or the nearest number thereto, but not exceeding the same, shall retire from office, (such proportion to be determined by lot) and the parishioners duly qualified shall elect a number of vestrymen equal to one-third of the vestry, to be chosen according to the provisions of this Act; and that on the next ensuing annual election for vestrymen, one half, or as nearly as may be one half, of the remaining part of the first aforesaid vestry, shall retire from office (such portion to be determined by lot), and the parishioners duly qualified shall again elect a number of vestrymen equal to one-third of the vestry to be chosen, according to the provisions of this Act; and that on the next, that is to say, the third annual election for vestrymen, the last remaining portion of the vestry as aforesaid shall retire from office, and the parishioners duly qualified shall elect vestrymen in like manner and number as at the two preceding elections, so as to fill up the vestry to the exact number of vestrymen prescribed by this Act.

Vestrymen to quit office after three years, and one third of the whole number to be elected annually.

25. That at every subsequent annual election, those vestrymen who have been three years in office shall go out of office, and the parishioners shall elect, according to the provisions of this Act, other vestrymen, to the number of one-third of the total number of which such vestry shall consist, as also fill up the vacancies which may occur from death or other causes; provided always, that any or all of the vestrymen so going out by rotation may be immediately eligible for re-election.

Qualifica-

26. That the vestry elected under this Act in any

parish not within the metropolitan police district, or the city of London, shall consist of resident householders, rated or assessed to the relief of the poor upon a rental of not less than 10*l.*; and no person shall be capable of acting as one of the said vestry, unless he shall be the occupier of a house, lands, tenements, or hereditaments, rated or assessed upon the aforementioned amount of rental within the parish in which he is to serve; provided always, that if the parish adopting this Act should be within the metropolitan police district or the city of London, or if the resident householders therein should amount to more than 3000, then and in that case the vestry elected under this Act shall consist of resident householders rated or assessed to the relief of the poor in such parish, upon a rental not less than 40*l.* per annum.

tions of
vestrymen.

27. That from and after the adoption of the Act in any parish, the vestry shall exercise the powers and privileges held by any vestry now existing in such parish, and the authority of any vestry may be pleaded before any justice or justices of the peace, or in any court of law, in regard to all parochial property, or monies due, or holdings or contracts, or other documents of the like nature, formerly kept under the control or in the keeping of the said vestry of the said parish; and all parish officers or boards shall account to them in like manner as they have accounted to the said vestry; provided always, that nothing in this Act shall be deemed, construed, or taken to repeal, alter, or invalidate, any local Act, for the government of any parish by vestries, or for the management of the poor by any board of directors and guardians, or for the due provision of divine worship within the said parish, and the maintenance of the clergy officiating there, otherwise than is by this Act expressly enacted regarding the elections of vestrymen and auditors of accounts.

Vestries
appointed
after the
adoption of
this Act to
exercise the
authority of
former
vestries.

Not to affect
local Acts
regarding
vestries, di-
vine worship,
&c. except as
herein
expressed.

28. That all powers or duties to be performed by the vestry of any parish adopting this Act, may be exercised and performed respectively by the major part of such vestry assembled at any meeting, there not being less than five vestrymen present at a meeting at a vestry which consists of twelve or more of

The acts of a
quorum of a
vestry at any
meeting to be
considered as
the acts of
the vestry.

elected vestrymen, and not exceeding twenty-three ; and not being less than seven vestrymen present at a meeting of a vestry which consists of twenty-four or more elected vestrymen, and not exceeding thirty-five ; and not being less than nine vestrymen present at a meeting of a vestry which consists of thirty-six elected vestrymen or upwards ; and all orders and directions given, and all contracts and engagements entered into by the vestrymen present at such meeting, or the major part of them assembled, shall be as valid and effectual as if the same were done by all the said vestrymen for the time being, and shall be binding and conclusive on all such vestrymen, provided that the same is confirmed at the next subsequent meeting of the vestry.

Meetings not to be held in the church.

29. That in any case in which the vestry-room of any parish in any city or town, shall not be sufficiently large and commodious for any vestry meeting, such meeting shall be held elsewhere within the said parish or place, but not in the church or chapel thereof.

Meeting to elect a chairman.

30. That at any meeting at any vestry, in the absence of any person authorized by law or custom to take the chair, the members present shall elect a chairman for the occasion before proceeding to other business.

Proceedings to be entered in books to be open to inspection.

31. That the vestry of every parish adopting this Act shall cause to be provided or kept a proper book or books, and proper entries to be made therein of the names of the several vestrymen who shall attend the respective meetings of the vestry, and of all orders of proceedings made or taken at such meetings ; and all such books shall at all reasonable times be opened to the inspection of the said vestrymen, and of any person rated or assessed to the relief of the poor in the said parish, and of any creditor on the rates of the said parish, without fee or reward ; and the said vestrymen, persons, and creditors, or any of them, shall, and may take copies of or extracts from such books respectively, without paying any thing for the same ; and in case the clerk to the said vestry, or other person having the care of such books, shall refuse to permit, or shall not permit

the said vestrymen, or such persons or creditors to inspect the same, or to take such copies or extracts as aforesaid, such clerk or other person shall forfeit and pay any sum of money not exceeding 10*l.* for every such offence.

32. That the said vestry shall, and they are hereby required to cause a book, or books, to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and disbursed for or on account of parochial purposes, and of the several articles, matters, and things for which such sums of money shall have been so received and disbursed; which book or books shall at all seasonable times be open to the inspection of the said vestrymen, and of any person or persons rated to the relief of the poor in such parish, and of any creditor or creditors on the same, without fee or reward; and the said vestrymen, and persons and creditors as aforesaid, or any of them, shall or may take copies of, or extracts from, the said book or books, from any part or parts thereof, without paying any thing for the same: and in case the clerk to the said vestrymen, or other person with whom such books shall remain, shall on any reasonable demand refuse to permit, or shall not permit the said vestrymen, persons, or creditors, or any of them, to inspect the said book or books, or to take copies or extracts as aforesaid, such clerk or other person as aforesaid shall forfeit and pay any sum not exceeding 10*l.* for every such offence.

Account books to be kept and to be open to inspection.

33. That in any and every parish adopting this Act, the parishioners duly qualified to vote for vestrymen as aforesaid, shall elect five rate-payers of the said parish who shall have signified in writing their assent to serve to be auditors of accounts, which auditors shall be so elected on the first day on which the vestrymen shall be chosen, after such parish shall have adopted this Act, and according to the same forms of voting as are herein-before prescribed for the election of the vestry: provided always, that no person shall be eligible to fill the said office of auditor of accounts who shall not be qualified, accord-

Auditors to be chosen annually.

Qualifications.

Further qualifications of auditors.

Disqualification.

Mode of audit.

ing to the provisions of this Act, as herein-before stated, to fill the office of vestryman for the said parish; and provided always, that no person shall be eligible to fill the said office of auditor of accounts, who shall be one of the vestry for the said parish; and if any person on the day of annual election shall be chosen to be both a member of the vestry and an auditor of accounts, the said vestry at their first meeting after such election, shall declare the same person incapable of acting as vestryman: provided also, that no person shall be eligible to fill the said office of auditor of accounts who shall be interested, either directly or indirectly, in any contract, office, business, or employ, or in providing or supplying any materials or articles for the parish for which he is to serve; and any person who shall be discovered, after his election, to be so interested, shall cease to be an auditor.

34. That the aforesaid auditors of accounts shall meet twice at least in each year, at the board room of the vestry, and (a majority of the said auditors being present at such meetings) shall proceed to audit the accounts of the said vestry for the preceding half year, in presence of the vestry clerk; and the said vestry are hereby required by their said clerk to produce and lay before the said auditors, at every such meeting, a true and just statement or account in writing, accompanied with proper vouchers, of all sums of money which have come to the hands of the said vestry or of their treasurer, and also of all monies paid, laid out, or expended by them, or by any churchwardens, overseers, surveyors, or other persons by them employed, and responsible to the said vestry, since the last period up to which the accounts of the vestry were audited; and in all parishes in which other boards shall have controul over any part of the parochial expenditure, the said auditors shall have the same power of examining the accounts and officers thereof, as of examining the accounts and officers of the vestry, and shall audit the accounts of the said boards in the same manner as they audit the accounts of the said vestries.

35. That the said auditors shall have power to summon and call before them by a writing for that purpose, signed by any one of them, or by the clerk of the vestry in any parish adopting this Act, any parish officer, or other person or persons whatsoever concerned in the said accounts, and to require of him, or her, or them, to attend the said auditors at any meeting or adjourned meeting, and to bring with them all books of accounts, writings, papers, and documents required, which may concern the said accounts, and to give such information as to the particulars of the accounts which he, she, or they, may be enabled to give; and any parish officer, or other person, refusing so to attend, or otherwise wilfully obstructing the purposes of such inquiry, shall be deemed guilty of misdemeanor.

Auditors may call for persons and books.

36. That the said accounts when audited and approved by the said auditors, or by the major part of them, shall be by them signed in the presence of the clerk of the aforesaid vestry in any parish adopting this Act; the said clerk of the vestry shall also fix his signature to the same; and it shall be lawful for the aforesaid auditors to subjoin such remarks thereto as to them shall seem meet.

Accounts to be signed by auditors.

37. That the said accounts, when so audited and signed, shall remain at the office of the clerk of the said vestry; and that the said accounts, after such audit, shall be open and accessible for the examination, at all reasonable times, of any person rated to the relief of the poor of the said parish, and of any creditor on the rates thereof; provided always, that nothing in this Act contained relative to the appointment and duty of auditors shall debar the parishioners from any remedy by them before possessed by the law of the land.

Accounts.

38. That an abstract of the accounts of all monies received and disbursed by the vestry in any parish adopting this Act, shall, twice in a year, within fourteen days after the same shall have been audited in manner in this Act mentioned, be made out by the clerk of the said vestry, either in writing or in print, and a copy of such abstract shall be delivered to all

Abstracts of accounts to be published fourteen days after being audited.

persons applying for the same, and rated or assessed to the relief of the poor of the said parish, such person paying 1s. for the same ; and which copies the said clerk is hereby required to cause to be published either in writing or in print, and to be distributed accordingly.

Vestries to make out and publish yearly a list of the estates, charities, and bequests, &c. with the application thereof.

39. That in any parish adopting this Act, the vestry shall cause to be made out, once at least in every year, a list of the several freehold, leasehold, and copyhold estates, and of all charitable foundations and bequests, if any, belonging to the said parish, and under the controul of the said vestry ; the said list to contain a true and detailed account of the place where such estate or charitable foundation may be situate, or in what mode of security such bequest may be invested, specifying also the yearly rental of each, and the particular appropriation thereof, together with the names of the persons partaking of their benefit, (except where such benefit shall be allotted to the poor of the parish generally,) and to what amount in each case, and also stating the name and description of the persons in whom such estates are vested, and the names and description of the trustees of each charity : provided always, that the aforesaid list shall be open for the inspection of the rate-payers, at the office of the vestry clerk, at the same time with the accounts, when audited according to the provisions of this Act.

Saving of ecclesiastical jurisdiction.

40. That this Act, or any thing herein contained, shall not extend, or be construed to extend, to invalidate, or avoid, any ecclesiastical law or constitution of the Church of *England*, save and except so far as concerns the appointment of vestries, or to destroy any of the rights or powers of the archbishops, bishops, deans, or other of the clergy of the said Established Church, either as individuals or incorporate bodies, or in anywise to abridge or controul their ordinary jurisdiction over, or relating to, any matter or thing relating to any ministers thereof.

Sections 41 and 42 explain terms used in the Act ; as that " person " or " party " shall include any number of persons or parties ; that " church or chapel "

shall include all places of religious worship according to the forms of the Established Church, &c. &c.

43. That nothing in this Act contained shall extend to any parish, not being within or being part of any city or town, in which parish there shall not be a greater number than 800 persons rated as householders, and having paid the rate for the relief of the poor within the year preceding that in which the provisions of this Act may be desired to be put in execution within such parish.

See VESTRY, SELECT—p. 413.

Vestry Clerk.

The vestry clerk is an officer chosen by the vestry, ^{Vestry clerk, what.} to which he acts as a sort of registrar or secretary, (and too frequently as an *attorney*,) but he has no vote upon, or any right to take part in, the business submitted to the vestry. (*Shaw.*)

His business is to attend at all parish meetings, ^{His business.} and to draw up and copy all orders and other acts of the vestry, and to give out copies thereof when necessary; and therefore he hath the custody of all books and papers relating thereto. (*Ibid.*)

But now the custody of such books, &c. is not necessarily confided to the vestry clerk; for by the 58 Geo. 3. c. 69. s. 6. it is enacted, that the "vestry books, rates and assessments, accounts and vouchers, of churchwardens, overseers of the poor, surveyors of the highways, and other parish officers, and all certificates, orders of justices, and of courts, and all other parish books, writings and papers, shall be kept by *such person*, and in such place and manner, as *the inhabitants in vestry shall direct.*"

In the case of *The King v. The Churchwardens of Croydon*, it was determined by Lord Thurlow, that the appointment by the vestry of a clerk, for the better management of the duty devolving on them, was an office of a merely private nature, depending altogether on the will of the inhabitants, who might appoint a different clerk at each vestry. "Neither, said his Lordship, "is any salary annexed to the

^{The appointment.}

situation. If the fees are to be paid out of the poor-rates, there is an end to all prescriptive right to it. As to any agreement made by the parishioners that such should be an annual office, it cannot be obligatory longer than the parties choose to fulfil it, for it may be revoked at the next vestry. It is not, therefore, a fixed permanent office, for which a *mandamus* will lie." (5 *Term Rep.* 714.)

Duties and
fees.

And in another case, the duties of vestry clerk being referred to, it was held that his principal duties were, "to minute down, draw up, and copy, all orders and acts of the vestry, and to give copies thereof, and of assessments for the relief of the poor, to the parishioners, when required, for which he was *entitled to be paid* by the parties requiring them. But he was not compellable to produce, or permit copies of, documents from the parish chest in his custody, for any other than parochial purposes." (*May v. Gwynne*, 4 *Barn. & Ald.* 301.)

Attornies,
vestry clerks.

A custom has prevailed of late years of appointing attornies as vestry clerks. The numberless statutes by which parochial affairs are now regulated, give something like a sanction to this practice, and the conflicting decisions of the courts of law on parish cases would lead to a belief that none but a lawyer could be qualified for the office. But, whatever may be the cause, the fact appears to be unquestionable that such appointments have tended greatly to the increase of parochial expenditure; for the professional gentlemen thus selected as vestry clerks, however unjust it may be to attribute to them obliquity, foul play, or evil designs, very naturally carry with them into office, a sort of *esprit du corps*, which leads to appeals to quarter sessions, vexatious removals, litigious contests, journeys half over the kingdom, the inevitable consequence of which is an enormous annual expenditure, amounting, *it is said*, to something like one-third of the total poor-rates! Human nature, it has been justly observed, is but rarely formed of materials sufficiently rigid to persist in an undeviating line of rectitude and public duty, in defeat of the objects and prospects of a profession

which (with the lucky addition of the office of vestry clerk) places independence within reach.

Vestry, Select.

In large and populous parishes, especially in and near the metropolis, a custom has obtained of choosing annually a select number of the chief and most respectable parishioners to manage the concerns of the parish; and this has been held to be a good and reasonable custom, (2 *P. Will.* 3. *Lutw.* 1027. *Gibs.* 219.) though it has now fallen into disrepute.

Select vestries, except those established under Mr. Sturges Bourne's Act, (see below) can only exist legally by custom or prescription, or by the authority of some local Act. Select vestries by custom. &c.

By the 10 Anne, c. 11. it is provided that five or more of the commissioners under that Act, (for building new churches) with the consent of the bishop or ordinary, shall appoint a convenient number of sufficient inhabitants of each new parish created by that Act, to be vestrymen; with power to such vestrymen to fill up vacancies in their number from time to time by inhabitants and householders in the parish. Select vestries under New Churches' Acts.

In several of the other Acts, private as well as public, provision is made for the appointment of select vestries.

And by Mr. Bourne's Act, commonly called the *Select Vestry Act*, the inhabitants of any parish in England, in vestry assembled, are empowered to establish a select vestry for the concerns of the poor of such parish, and to that end to nominate and elect, in the same or any subsequent vestry, or any adjournment thereof respectively, such and so many substantial householders or occupiers within such parish, not exceeding the number of twenty, nor of less than five, as shall in any such vestry be thought fit to be members of the select vestry; and the rector, vicar, or other minister of the parish, and in his absence the curate thereof (such curate being resident New Select Vestry Act.

The inhabitants of any parish in England may establish a select vestry.

in and charged to the poor's rate in such parish), and the churchwardens and overseers of the poor for the time being, together with the inhabitants who shall be nominated and elected as aforesaid (such inhabitants being first thereto appointed by writing under the hand and seal of one of his Majesty's justices of the peace, which appointment he is hereby authorized and required to make), shall be and constitute a select vestry for the concerns of the poor of such parish; and any three of them (two of whom shall be neither churchwardens nor overseers of the poor) shall be a quorum, and when any inhabitant elected and appointed to serve in any such select vestry shall, before the expiration of his office, die, or remove from the parish, or shall become incapable of serving, or shall refuse or neglect to serve therein, the vacancy which shall be thereby occasioned, shall, as soon as conveniently may be, be filled up by the election and appointment in manner aforesaid of some other substantial householder or occupier of such parish, and so from time to time when any such vacancy shall occur; and every such select vestry shall continue and be empowered to act, from the time of appointment thereof, until fourteen days after the next annual appointment of overseers of the poor of the parish shall take place, and may, from year to year, and in any future years, be renewed in the manner herein-before directed; and every such select vestry shall meet once in every fourteen days, or oftener if it shall be found necessary, in the parish church, or in some other convenient place within the parish; and at every such meeting a chairman shall be appointed by the majority of the members present, who shall preside thereat, and in all cases of equality of votes upon any question there arising, the chairman shall have the casting vote; and every such select vestry is empowered and required to examine into the state and condition of the poor of the parish, and to inquire into and determine upon the proper objects of relief, and the nature and amount of relief to be given, and in each case shall take into consideration the character and conduct of

the poor person to be relieved, and shall be at liberty to distinguish in the relief to be granted between the deserving and the idle, extravagant or profligate poor; and such select vestry shall make orders in writing for such relief as they shall think requisite, and shall inquire into and superintend the collection and administration of all money to be raised for the poor's rates, and of all other funds and money raised or applied by the parish to the relief of the poor; and where any such select vestry shall be established, the overseers of the poor are required, in the execution of their office, to conform to the directions of the select vestry, and shall not (except in cases of sudden emergency or urgent necessity, and to the extent only of such temporary relief as each case shall require, and except by order of justices in the cases hereinafter provided for,) give any further or other relief or allowance to the poor than such as shall be ordered by the select vestry. (59 Geo. 3. c. 12. s. 1.)

When any complaint shall be made to any justice of the peace of the want of adequate relief, by or on behalf of any poor inhabitant of any parish for which a select vestry shall be established by virtue of this Act, such justice shall not proceed therein, or take cognizance thereof, unless it shall be proved on oath before him that application for such relief hath been first made to and refused by the select vestry; and in such case, the justice to whom the complaint shall be made may summon the overseers of the poor, or any of them, to appear before any two of his Majesty's justices of the peace, to answer the complaint; and if upon the hearing thereof, it shall be proved on oath, to the satisfaction of the justices who shall hear the same, that the party complaining, or on whose behalf the complaint shall be made, is in need of relief, and that adequate relief had been refused by the select vestry, or that such select vestry shall not have assembled as by this Act directed, it shall be lawful for such justices to make an order, under their hands and seals, for such relief as they in their just and proper discretion shall think ne-

Proceedings
of justices in
case of com-
plaint of
want of relief
by a poor
inhabitant.

cessary (reference being had by such justices to the character and conduct of the applicant); provided, that in every such order the special cause of granting the relief thereby directed shall be expressly stated, and that no such order shall be given to extend for any longer time than one month from the date thereof; provided also, that it shall be lawful for any justice to make an order for the relief in any case of urgent necessity, to be specified in such order, so as such order shall remain in force only until the assembling of the select vestry of the parish to which such case shall relate. (*Ibid.* s. 2.)

Proceedings of select vestry to be entered in a book, with accounts of receipts and payments, &c.

Every select vestry to be established by authority of this Act, shall cause minutes to be entered in books, to be for that purpose provided, of all their meetings, proceedings, resolutions, orders, and transactions, and of all sums received, applied, and expended by their direction; and such minutes shall from time to time be signed by the chairman, and shall, together with a summary or report of the accounts and transactions of the select vestry, be laid before the inhabitants of the parish in general vestry assembled, twice in every year, that is to say, in the month of March and the month of October, and at such other times as the select vestry shall think fit; and the minutes, proceedings, accounts, and reports of every select vestry, shall belong to the parish, and be preserved with the other books, documents, accounts, and public papers thereof. (*Ibid.* s. 3.)

Ten days' notice to be given previously to establishing a select vestry.

The churchwardens and overseers of the poor shall cause ten days' notice, at the least, to be publicly given, in the usual manner, of every vestry to be holden for the purpose of establishing any select vestry, or of nominating and electing the members, or any member thereof, and of every vestry to be holden for the purpose of receiving the report of the select vestry; and every notice of any such vestry shall state the special purpose thereof. (*Ibid.* s. 4.)

Vicar.

The priest of every parish is called rector, unless the predial tithes are appropriated, and then he is styled vicar; and when rectories are appropriated, vicars are to supply rectors' places.

Upon endowment, the vicar hath an equal charge, though not so great an interest in the church as a rector; the freehold of the church, church-yard, and glebe is in him; to have all the tithes in the parish, except those of corn, &c. Many vicars have a good part of the great tithes; and some benefices, that were formerly served by impropriation, have, by being united, had the glebe and tithes given to the vicars; but tithes can no other way belong to the vicar than by gift, composition, or prescription; for all tithes, *de jure* appertain to the parson; and yet generally vicars are endowed with glebe and tithes, especially small tithes, &c. If a vicar be endowed with small tithes by prescription, and afterwards land, which had been arable time out of mind, is altered, and there are growing small tithes thereon, the vicar shall have them; for his endowment goes to such tithes, in any place within the parish. (*Cro. Eliz.* 467. *Hob.* 39.) But where the vicarage is endowed out of the parsonage, he shall not have the tithes of the parson's glebe, or of land that was part thereof at the time of the endowment, but afterwards severed from it; yet it seems to be otherwise, if the glebe lands are in the hands of the parson's lessee. (*Cro. Eliz.* 479. *Mallor*, 2 *Imped.*) See title TITHES.

VISITOR OF THE POOR-HOUSE,—See GUARDIAN, &c.

WATCHING AND LIGHTING,—See LIGHTING.

Workhouse.

In the case of a parish not having a workhouse, or having one which is insufficient or inconvenient, the churchwardens and overseers, by the direction of the inhabitants in vestry, may build a suitable work-
Parish officers may build, alter, or enlarge, workhouses.

house, or alter and enlarge any messuage or tenement belonging to the parish for that purpose, and purchase or take on lease any ground within the parish for the purpose of building or enlarging any such messuage or tenement; or they may add to and enlarge any such insufficient workhouse, as the inhabitants in vestry shall direct. (59 Geo. 3. c. 12. s. 1.)

And may
sell insuf-
ficient
workhouses.

Where a workhouse is insufficient, or incapable of being enlarged or used as a workhouse, the churchwardens and overseers, by the direction of the inhabitants in vestry, and with the consent of two justices, may sell such insufficient workhouse, with the site, and the outhouses, offices, yards, and gardens; and after deducting the expenses, apply the produce of the sale towards the purchase or building of a new workhouse, or towards the payment of money borrowed under the authority of this Act, as the inhabitants in vestry shall direct. (*Ibid.* s. 9.)

Churchwar-
dens and
overseers
may purchase
or hire a
workhouse
in adjoining
parish.

Where no poor-house can be procured in the parish, the churchwardens and overseers, by the direction of the inhabitants in vestry, may purchase or hire any suitable and convenient house or houses, building or buildings, for that purpose, in any adjoining parish, with the consent of two or more justices, such consent to be written upon or annexed to the agreement; but no such house or building shall be more than three miles from the parish for which it shall be purchased or hired. (*Ibid.* s. 10.)

Justices, &c.
may visit
workhouses.

Any justice of the peace, (physician, surgeon, apothecary, or officiating clergyman, authorized by such justice,) may in the day time visit any parish workhouse or houses (except workhouses regulated by any special Act of Parliament,) kept for the maintenance of the poor within the county, and examine into the condition of the poor, the food, bedding, and clothing, and the condition of the house; and if there be any cause of complaint, the justice, physician, &c. are to certify the same under hand and seal to the next quarter sessions for the county, and cause the overseers, or master, or governor of the workhouse, to be summoned to appear to answer the

complaint at the sessions ; and the justices there shall make order for removing the cause of complaint. (30 Geo. 3. c. 49. s. 1. 3.)

If such justice, physician, &c. upon any such visitation, find any of the poor affected with contagious or infectious disease, or in want of immediate medical or other assistance, or of sufficient or proper food, or requiring separation or removal from the other poor, in case the visitation be made by a justice, then he shall apply to another justice of the county, quarter, or division, and certify to him the state and condition of the poor in such house ; or if the visitation be made by such other persons, they shall apply to two justices, who shall make order for immediate medical assistance, or for sufficient or proper food, or for separation or removal of the afflicted poor, until the next quarter sessions ; at which sessions they are to certify the same under their hands and seals, in order that the sessions may make such order for the further relief of the poor in such workhouse as to them shall seem meet. And the charges of relieving such poor shall be paid out of the poor's rate, as the sessions shall direct. (*Ibid.* s. 2.)

Contagious
and infec-
tious disease
in work-
house.

Overseers of the poor may cause all goods, &c. to be marked or branded with the word "workhouse," and such other mark or brand as they think proper, (but such mark is not to be put on any article of wearing apparel, so as to be publicly visible on the outside thereof). And pawnbrokers, or any other person knowingly taking in pawn, buying, exchanging, or receiving any such goods, &c. or any part of the goods or materials carried into a workhouse to be wrought up or manufactured, or used by the poor there, or any of the goods or furniture of such house, or receiving or buying any of the provisions allotted to, or provided for, the poor in such house, or aiding or assisting therein, or defacing the marks or brands, every offender shall forfeit any sum not exceeding 5*l.* nor less than 20*s.*, upon conviction, either by confession of the party, or on the oath of one credible witness

Goods to be
marked.

before any one justice of the peace ; one moiety of the said forfeiture to be paid to the informer, and the other to the overseers to the use of the poor ; and in case of non-payment of the penalty, the offender may be committed to the common gaol or house of correction, there to remain, without bail or mainprize, for any time not exceeding two calendar months. (55 Geo. 3. c. 137.)

Persons absconding with workhouse property.

Any person who shall desert, or run away from, any workhouse, and carry away any clothes, linen, or other goods or things as aforesaid, shall, upon conviction, either by confession, or by the oath of some credible witness before any justice of the peace, be committed as above mentioned for the space of three calendar months. (*Ibid.*)

Mark proof of property.

The mark or brand on any such articles is sufficient evidence, without further proof, of the right of property. (*Ibid.*)

Misbehaviour by persons in a workhouse.

Any person maintained in any public workhouse, established for the relief, maintenance, and employment of the poor, refusing to work at any work, occupation, or employment, suited to his, her, or their age, strength, and capacity ; or being guilty of drunkenness or other misbehaviour, on conviction thereof before any justice of the peace, shall be committed to the common gaol or house of correction, without bail or mainprize, for any term not exceeding twenty-one days, and kept to hard labour. (*Ibid.* s. 5.)

Spirituous liquors in a workhouse.

No license to be granted for retailing spirits within any parish workhouse ; and if any governor, master, or officer, of any parish workhouse, shall sell, use, lend, or give away, or knowingly permit or suffer any spirits to be sold, used, lent, or given away in any workhouse, or brought into the same, other than and except such spirits as shall be prescribed or given by the prescription or direction of a regular physician, surgeon, or apothecary, and to be supplied in pursuance of such prescription from the shop of some regular apothecary, such governor or other officer shall forfeit or lose 100*l.* for the first offence, and in case of a second conviction for the like offence, the

same shall be deemed a forfeiture of his office.
(6 Geo. 4. c. 80. s. 34.)

Any justice of the peace, upon information on oath that spirits are kept and disposed of in any parish workhouse, may enter and search, or authorize any constable or other peace officer to enter and search, any workhouse, and if any spirits shall be found therein (except as aforesaid), the same may be seized and forthwith staved and destroyed by such peace officer or overseer of the poor. (*Ibid.* s. 35.)

Liquors may be seized, &c.

Any person carrying or bringing, or attempting to carry or bring any spirits (except as aforesaid) into any parish workhouse; the master or chief officer of the workhouse or his servants may arrest such person, and carry him before a justice of the peace, who is to hear and determine the offence in a summary way, and if by the oath of one credible witness the offender shall be convicted, he shall forthwith be committed to prison or to the house of correction, there to be kept to hard labour for any term not exceeding three months. (*Ibid.* s. 36.)

Persons taking spirits into a workhouse may be arrested and carried before a justice.

The master or chief officer of every parish workhouse is to procure one or more copy or copies of the above three clauses, (viz. s. 34, 35, and 36.) either printed or written, to be hung up in one of the most conspicuous places of the workhouse, and renew the same from time to time, so that it may be always kept fair and legible, on pain of forfeiting 10*l.* for every wilful neglect, to be levied by the warrant of any justice of the peace where the workhouse is situate, to be granted on conviction in a summary way before such justice, by the oath of one credible witness. And any justice of the peace may enter any such workhouse within his jurisdiction, and demand a sight of such copy so hung up as aforesaid; and if the same shall not be forthwith shown to him so hung up, fair and legible, he may immediately convict the said master or officer of such default, and so from time to time as often as he shall think fit. (*Ibid.* s. 37.) See further, GUARDIANS, VISITORS, &c.

Workhouse regulations to be kept.

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